



IAC-AH-KRL-V1

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

Appeal Number: AA/02871/2014

THE IMMIGRATION ACTS

**Heard at Birmingham
On 5th June 2015**

**Decision & Reasons Promulgated
On 19th June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**NIROSHAN PUSHPARAJAH
(ACTUAL NAME - GUNARATNAM PRABHAKAR)
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Mr N Smart, Senior Home Office Presenting Officer

For the Respondent: Mr N Paramjorthy of Counsel, instructed by Vasuki Solicitors

DECISION AND REASONS

Introduction and Background

1. The Secretary of State appeals against a decision of Judge of the First-tier Tribunal Camp promulgated following a hearing on 5th June 2014.
2. The Respondent before the Upper Tribunal was the Appellant before the First-tier Tribunal and I will refer to him as the claimant.

3. The claimant is a male Sri Lankan citizen born 24th August 1970 who arrived in the United Kingdom in October 2008, and claimed asylum on 9th August 2013. The claim was based upon the claimant's political opinion, that being his support and membership of the Liberation Tigers of Tamil Eelam (LTTE).
4. The Secretary of State refused the application, giving reasons for refusal in a letter dated 16th April 2014. A Notice of Immigration Decision dated 17th April 2014 was issued, indicating that a decision had been made to remove the claimant from the United Kingdom following refusal of his asylum and human rights claim.
5. The appeal was heard on 5th June 2014, the judge finding the core of the claimant's account credible, and therefore the appeal was allowed on asylum and human rights grounds.
6. The Secretary of State was subsequently granted permission to appeal to the Upper Tribunal.

Error of Law

7. The appeal came before me on 25th November 2014. After hearing submissions from both parties I set aside the decision of the First-tier Tribunal. There had been no challenge to the findings made by the judge as to what the claimant claimed had happened to him in Sri Lanka, and those findings were preserved, as was the finding that the claimant had joined the Transnational Government of Tamil Eelam (TGTE) in 2012 while in the United Kingdom. I found that the judge had erred by failing to adequately explain what activities the claimant had carried out in the United Kingdom that would bring him to the attention of the Sri Lankan authorities. The judge made no finding that the army in Sri Lanka had maintained a continuous adverse interest in the claimant by visiting his home, and made no finding that the claimant was on a watch or a stop list. There was a conflict between the claimant's evidence as set out in his witness statement, and a letter from the TGTE dated 6th April 2014 which described the claimant as an organiser of meetings and public events. The claimant had not claimed to be such an organiser with the TGTE. The Judge had not made findings to resolve the conflicting evidence.
8. The hearing was adjourned for a continuation hearing to take place so that further evidence could be heard as to the claimant's activities in the United Kingdom and so that consideration could be given as to whether a combination of the claimant's activities in Sri Lanka, together with his activities in the United Kingdom placed him at risk if returned to Sri Lanka.
9. Full details of the application for permission to appeal, the grant of permission by Judge Molloy, and my full reasons for finding an error of law are contained in my decision dated 1st December 2014.

Re-making the Decision

The Law

10. The claimant is entitled to asylum if he is outside his country of nationality and is recognised as a refugee, as defined in regulation 2 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 as a person who falls

within Article 1A of the 1951 Geneva Convention. The onus is on him to prove that he has a well-founded fear of persecution for a Convention reason (race, religion, nationality, membership of a particular social group or political opinion), and is unable or, owing to such fear, unwilling to avail himself of the protection of the country of his nationality.

11. The claimant is eligible for humanitarian protection under paragraph 339C of the Immigration Rules if he does not qualify as a refugee, but establishes substantial grounds for believing that if he was removed from the United Kingdom, he would face a real risk of suffering serious harm, and is unable or, owing to such risk, unwilling to avail himself of the protection of the country of return.
12. In relation to Articles 2 and 3 of the 1950 European Convention on Human Rights (the 1950 Convention) it is for the claimant to establish that if removed from the United Kingdom there is a real risk of him being killed, or subjected to torture or inhuman or degrading treatment or punishment.
13. The burden of proof is on the claimant and can be described as a reasonable degree of likelihood, which is a lower standard than the normal civil standard of the balance of probabilities. I must look at the circumstances as at the date of hearing.

Documents

14. In re-making this decision I have taken into account the Respondent's bundle of documents with Annexes A-K, the claimant's bundle comprising 64 pages, the claimant's written submissions dated 5th June 2014, and a supplementary bundle submitted on behalf of the claimant comprising thirteen pages.

The Claimant's Claim

15. The claimant's claim as considered by the First-tier Tribunal is set out in his screening interview dated 9th August 2013, his substantive asylum interview dated 8th April 2014, and his witness statement dated 3rd June 2014 and may be briefly summarised as follows.
16. The claimant became an LTTE supporter in April 2002 and in February 2004 started to work for the LTTE as an interpreter. He also provided tuition to students at his home where he would teach them about the LTTE aims and the problems that Tamils faced. The claimant is of Tamil ethnicity.
17. Some of the students later joined the LTTE. The claimant stopped working for the LTTE in 2005. He was arrested on 22nd November 2006 and accused of being involved in LTTE recruitment. He was told that a student who had subsequently joined the LTTE had provided information about him.
18. The claimant was detained and tortured. He eventually admitted his involvement with the LTTE. He was given an army uniform to wear and a mask, and he identified six or seven people involved with the LTTE so that the army could arrest them.
19. After being detained for approximately four months the claimant was visited by his father-in-law who eventually arranged for a bribe to be paid and the claimant was released.

20. He was placed on a flight to Colombo and from there was taken to Kandy. The agent arranged for a passport and visa and the claimant visited the visa office in Colombo and had his fingerprints taken for visa purposes.
21. The claimant travelled from Colombo Airport and arrived in the United Kingdom on 15th October 2008. The claimant used a false name on arrival in the United Kingdom as he had been told to do this by the agent. He used the same name as in his false passport.
22. Having arrived in the United Kingdom he was met by a man called Suresh and he worked part-time in his shop for a year. In 2009 he moved to Coventry and stayed with a man called Ahilan.
23. In 2012 the army started to visit his home in Sri Lanka and harassed his wife as they had received information that he was still alive.
24. The claimant became a member of the TGTE in January 2012 and attended meetings every two or three months. He has had photographs of himself taken at meetings and at demonstrations.
25. The claimant appreciates that he should have claimed asylum sooner and should not have burnt his passport, but he did this having been advised to do so by the agent.

The Refusal

26. The reasons for refusal are contained in a letter dated 16th April 2014. It was accepted that the claimant is a national of Sri Lanka, but the remainder of the claim was not accepted, and the Secretary of State did not find that the claimant had given a credible account. Although it was accepted that the claimant is of Tamil ethnicity, it was not accepted that he had been involved with the LTTE, it was not accepted that he had been detained by the army and ill-treated, and it was not accepted that he entered the UK in the manner that he claimed, nor was it accepted that his wife was being harassed by the army in Sri Lanka.
27. The Secretary of State considered risk on return in the light of GJ and Others Sri Lanka CG [2013] UKUT 00319 (IAC) and concluded that the claimant would not be at risk if returned to Sri Lanka.

The Upper Tribunal Hearing - 5th June 2015

Preliminary Issues

28. Neither the Tribunal nor Mr Smart had received the claimant's supplementary bundle comprising thirteen pages. Mr Paramjorthy applied for this to be admitted and Mr Smart objected as directions requiring any further documentation to be supplied at least fourteen days prior to the hearing had not been complied with.
29. I decided to admit the bundle which comprised of an updated witness statement and photographs, taking into account rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008, and the overriding objective to deal with cases fairly and justly. I took into account that the bundle was being served late, but also that this was an asylum claim, and it was therefore important that the Tribunal considered all relevant evidence.

30. Having admitted the supplementary bundle in evidence, I put the case back to allow Mr Smart time to consider the documents, and indicated that if further time was needed it would be granted.
31. When the hearing resumed both representatives indicated that they were ready to proceed and there was no application for an adjournment. Mr Paramjorthy confirmed that the claimant did not rely upon Article 8 of the 1950 Convention.

Oral Evidence

32. The claimant gave evidence with the assistance of an interpreter in Tamil. There were no difficulties in communication.
33. The claimant adopted his witness statement dated 3rd June 2015 which may be summarised as follows. The claimant has been involved with pro-LTTE Tamil political activity since being in the United Kingdom and became a member of the TGTE in January 2012. He attended meetings and talked to people about having a separate Tamil state. He attended meetings every two or three months and was also involved in international meetings which were held in various parts of the UK.
34. The claimant has produced photographic evidence of his involvement in a TGTE conference on Tamil genocide and he had obtained a photograph of this conference on YouTube.
35. The claimant also produced photographs of himself at the TGTE office in November 2013, and of himself at the Mullivaikal Remembrance Day on 18th May 2014, and on 18th May 2015.
36. The claimant considered that he would be at risk on return to Sri Lanka due to his previous record of arrest and detention and due to the fact that the authorities started to search for him in 2012 and since then had continuously harassed his wife on a monthly basis.
37. On 15th November 2014 the CID visited his home in Sri Lanka and asked his wife where he was living in the United Kingdom and she stated that she had lost contact with him. Visits had continued on a monthly basis, and the last visit was on 30th April 2015.
38. The claimant was questioned by both representatives. I have recorded all questions and answers in my Record of Proceedings and it is not necessary to reiterate them in full here.
39. The claimant identified himself to Mr Paramjorthy in various photographs. In cross-examination the claimant confirmed that he had attended TGTE meetings, and Remembrance Day demonstrations but had not organised them. He did not know the names of the speakers at the international conference on accountability for Tamil genocide in Sri Lanka.
40. The claimant was asked why he thought the authorities in Sri Lanka had started visiting his home in 2012 when he had ceased working for the LTTE in 2005 and he said that he assumed that it was when the authorities realised that he was still alive. He thought that Sri Lankans in the United Kingdom might have seen him and informed upon him.

The Secretary of State's Submissions

41. Mr Smart submitted that the appeal should be dismissed. It was clear that the claimant had not been involved in organising events in opposition to the Sri Lankan government while in the United Kingdom. This conflicted with the contents of the TGTE letter dated 6th April 2014 which described him as the organiser of public events and demonstrations.
42. Mr Smart submitted that simply attending meetings and demonstrations would not bring him to the adverse attention of the authorities and he relied upon GJ Sri Lanka, paragraphs 335-352, and in particular paragraph 336. The Court of Appeal in MP and Another [2014] EWCA Civ 829 had approved the decision in GJ.
43. I was asked to place little weight on the claimant's contention that the authorities in Sri Lanka had been visiting his home on a monthly basis since 2012. There was no evidence, other than the claimant's assertion that this was the case and it was unlikely that such visits would be made, if the authorities had been told that the claimant was in the United Kingdom. I was asked to find that the claimant would not be at risk if returned to Sri Lanka.

The Claimant's Submissions

44. Mr Paramjorthy submitted that the starting point was the findings of fact made by the First-tier Tribunal which had been preserved, which related to his LTTE involvement in Sri Lanka, and his subsequent detention. In addition the finding that the claimant had joined the TGTE in the United Kingdom in January 2012 had not been challenged and was preserved.
45. I was asked to find the claimant's evidence honest and sincere and to find that the letter dated 6th April 2014 from the TGTE in the United Kingdom was not inconsistent with the claimant's evidence, as it referred to his "involvement with our activities in the UK."
46. Mr Paramjorthy pointed out that the TGTE is a proscribed organisation. Although mere attendance at meetings in the United Kingdom without more would be insufficient to attract the adverse interests of the authorities in Sri Lanka, I was asked to consider that in this case the claimant's profile or perceived profile would be such as to attract attention, and put him at risk on return.
47. If questioned upon return to Sri Lanka the claimant could not be expected to lie about his activities. I was reminded that it was accepted that the claimant had previously been detained and tortured, and if he was questioned upon return and he admitted his involvement with the TGTE, that together with his activities in Sri Lanka, meant that it was reasonably likely that he would be detained, and therefore at risk of ill-treatment.
48. Mr Paramjorthy relied upon paragraph 356(7)(a) of GJ, submitting that the claimant would be perceived by the Sri Lankan authorities to have a significant role in relation to post-conflict Tamil separatism within the diaspora.
49. I was asked to allow the appeal on the basis that the claimant had discharged the burden of proof to show that he would be at risk if returned to Sri Lanka.

50. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

51. I have taken into account all the evidence both oral and documentary placed before me, together with the submissions made by both representatives. I have considered the evidence in the round and taken into account the circumstances at the date of the hearing. I have considered this appeal in the light of the provisions of paragraph 339L of the Immigration Rules. I am conscious of the need to take great care before making adverse findings of credibility in asylum cases.
52. When I found an error of law in the First-tier Tribunal decision, I indicated that because there had been no challenge to some findings, those findings would be preserved. They relate to the claimant's activities in Sri Lanka. The preserved findings from the First-tier Tribunal may therefore be summarised as follows.
53. The claimant was an LTTE supporter in 2002 and worked as an interpreter for the LTTE from February 2004 until 2005. He also taught some students about the LTTE.
54. The claimant was detained by the army on 22nd November 2006. He was tortured during detention and held for just over four months. He gave some information to the authorities and identified six or seven people as LTTE members. When he carried out that identification he was wearing an army uniform and a mask.
55. The claimant was released from detention after payment of a bribe, and with the assistance of an agent obtained a student visa and took a direct flight from Colombo Airport to the United Kingdom on 15th October 2008.
56. The claimant gave a false name on arrival in the United Kingdom as he had a false passport, and did not claim asylum until 9th August 2013. The claimant joined the TGTE in January 2012.
57. I now make findings in relation to the claimant's activities in the United Kingdom. I find that he has not given any satisfactory explanation as to why he waited until January 2012 to join the TGTE, as he had been in the United Kingdom since October 2008. In his oral evidence, the claimant indicated that he believed the TGTE was founded in 2009. There is no evidence that the claimant undertook any pro-LTTE activities, or took part in any anti-Sri Lankan government activities prior to January 2012.
58. A letter from the TGTE dated 6th April 2014 (page 31 of the claimant's bundle) describes the claimant as organising several public events in the UK, attending almost all the meetings, and taking an active role in organising events and public demonstrations. He is said to have taken an active role in the project of "international conference on Tamil genocide in Sri Lanka on 28th and 29th September 2013".
59. I do not find that this description of the claimant's activities is accurate. I note that no further evidence has been forthcoming from the TGTE to clarify the claimant's activities.
60. The claimant's evidence is that he has not organised any meetings or public events or demonstrations. That I find is accurate. He did not state that he took an active role

in the international conference on Tamil genocide, and was unable to name any of the speakers at that conference.

61. I find that the claimant has attended some TGTE meetings at their offices, and has had photographs of himself taken while attending, and that he has attended Remembrance Day demonstrations in May 2013, and in May 2014 and 2015 when he had photographs of himself taken together with others. He has not been a speaker at any public meeting, nor has he been a leader or an organiser.
62. I do not accept that the authorities in Sri Lanka have been calling at his family home since 2012. The claimant was unable to satisfactorily explain why, when he had ceased working for the LTTE in 2005, and left Sri Lanka in October 2008, the authorities would start visiting his home address on a monthly basis in 2012.
63. In his oral evidence the claimant stated that he assumed that it may have been because a Sri Lankan informer in the United Kingdom had seen him and informed the authorities, but that does not explain why the authorities would call at his home on a monthly basis if they knew he was in the United Kingdom. In his most recent witness statement the claimant stated that the authorities told his wife in November 2014 that they knew he was in the United Kingdom. There is no satisfactory explanation as to why the authorities would start calling at his family home in Sri Lanka and harassing his wife and calling on a monthly basis if they had information that he was in the United Kingdom.
64. Even taking into account the low standard of proof, I do not accept the claimant's evidence that the authorities have been calling at his family home as he has claimed.
65. In assessing the risk on return, I take into account paragraph 339K of the Immigration Rules, which I set out below;

‘339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, 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.’
66. I consider paragraph 339K because the claimant has previously been detained and ill-treated.
67. I assess the risk to the claimant in the light of GJ Sri Lanka, and MP and Another, in which GJ was approved and in which Lord Justice Underhill stated that there may, untypically, be other cases where the evidence shows particular grounds for concluding that the Sri Lankan government might regard an individual as posing a current threat to the integrity of Sri Lanka as a single state, even in the absence of evidence that he or she has been involved in diaspora activism.
68. The risk categories are contained in paragraph 356(7) of GJ and are set out below;

“(7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:

- (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.
- (b) Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government.
- (c) Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes. Among those who may have witnessed war crimes during the conflict, particularly in the No-Fire Zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes' witnesses.
- (d) A person whose name appears on a computerised "stop" list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a "stop" list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant."

69. The claimant is not a journalist nor has he given evidence to the Reconciliation Commission, and there is no evidence that his name is on a "stop" list. There has been no evidence that any court order or arrest warrant was issued for the claimant in Sri Lanka. Therefore the claimant does not fall within the risk categories set out at (b)-(d) above.

70. I have to consider whether the claimant is, or would be perceived to be by the Sri Lankan authorities, a threat to the integrity of Sri Lanka as a single state, because he is, or is perceived by the Sri Lankan authorities to have a significant role in relation to post-conflict Tamil separatism within the diaspora, and/or a renewal of hostilities within Sri Lanka.

71. I take into account paragraph 356(8) which I set out below;

"(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."

72. I also take into account paragraph 336 of GJ in which the Upper Tribunal found that attendance at demonstrations in the diaspora alone is not sufficient to create a real risk or a reasonable degree of likelihood that a person will attract adverse attention on return to Sri Lanka.

73. In relation to the Sri Lankan authorities intelligence, the Upper Tribunal in GJ set out their conclusions in paragraphs 351 and 352 which are set out below;
- “351. Our overall conclusion regarding diaspora activities is that the GOSL has sophisticated intelligence enabling it to distinguish those who are actively involved in seeking to revive and re-fund the separatist movement within the diaspora, with a view to destabilising the unitary Sri Lankan state. 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. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.
352. The evidence before us indicates that any Tamil who seeks a travel document from the SLHC in London or another diaspora hotspot will have a file created in Colombo and will be interviewed in London before a decision is made to issue a TTD. By the time the DIE in Colombo e-mails a TTD to London to be issued to such an individual, the Sri Lankan authorities will know all they need to know about what activities an individual has undertaken outside Sri Lanka and, in particular, whether the returnee poses a real risk to the unitary Sri Lankan state or the GOSL on return.”
74. In my view the authorities, in relation to the claimant, will be aware that he has joined the TGTE which is a proscribed organisation. They will be aware that having arrived in the United Kingdom, the claimant carried out no pro-LTTE activities for over three years. The Sri Lankan authorities will be aware that the claimant is not a leader of the TGTE, or an organiser of any meetings or demonstrations. The claimant does not play a significant role within that organisation. Although the claimant has attended some TGTE meetings, which are not public meetings, and he has attended Remembrance Day demonstrations in May 2013, 2014, and 2015, he does not have and would not be perceived to have a significant role in relation to post-conflict Tamil separatism, and would not be perceived to be a threat to the integrity of Sri Lanka as a single state.
75. I therefore conclude that if returned to Sri Lanka, the claimant would not be detained, and would not be of adverse interest to the authorities and therefore would not be at risk. With reference to paragraphs 339K the guidance in GJ indicates the Appellant would not be at risk because of his activities in the UK. There are therefore good reasons to consider the previous ill treatment will not be repeated.
76. I therefore find that he is not entitled to asylum or humanitarian protection, and there would be no breach of Articles 2 or 3 of the 1950 Convention.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and was set aside. I substitute a fresh decision as follows.

I dismiss the appeal on asylum grounds.

The claimant is not entitled to humanitarian protection.

I dismiss the appeal on human rights grounds.

Anonymity

The First-tier Tribunal did not make an anonymity direction. There has been no request for anonymity and the Upper Tribunal makes no anonymity order.

Signed

Date 9th June 2015

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date 9th June 2015

Deputy Upper Tribunal Judge M A Hall