



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

Appeal Number: AA/02985/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 13th January 2015**

**Decision & Reasons
Promulgated
On 22nd January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR AJANTHAN NIMALKUMAR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr R Tufan (Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge K S H Miller, promulgated on 29th October 2014, following the hearing at Taylor House on 3rd October 2014. In the determination, the judge dismissed the appeal of Ajanthan Nimalkumar. The Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Sri Lanka, who was born on 28th October 1988. He appealed against the refusal of asylum in a decision made by the Respondent Secretary of State dated 23rd April 2014, as well as appealing against his application for humanitarian protection and under the ECHR.

The Appellant's Claim

3. The Appellant's claim is linked with that of his brother Mayuran, who voluntarily joined the LTTE in 2006 and was involved with the Sea Tigers, resulting in the Appellant being visited by the Sri Lankan Army, taken to a camp, and detained, and mistreated. The Appellant claims to have been arrested on some five or six other occasions (see paragraphs 10 to 12). Since arrival in the UK on 16th July 2011, concealed in a van, and travelling from France by ferry, after having been to Switzerland, the Appellant claims to have been involved in political activity in the form of attending demonstrations in the UK, such that he had a claim based upon sur place activities.

The Judge's Findings

4. The judge did not accept the Appellant's claim. The judge made three specific findings.
5. First, if the Appellant had been detained in 2007 and 2008 and received injuries he would have gone with his father to India in 2008 but did not do so (see paragraph 39(i)).
6. Second, in 2009 the Appellant married someone from Sri Lanka, who went to India, and again the Appellant did not accompany her to India. If he was at risk this was quite inexplicable. The judge held that it was "beyond belief, that the Appellant would not have availed himself of his second opportunity to leave Sri Lanka, if what he stated regarding his treatment at the hands of the authorities were true" (paragraph 39(iii)). Indeed, the Appellant remained in Sri Lanka for some three years before leaving that country (paragraph 39(iv)).
7. Third, in rejecting the expert report of Professor Lingam that the Appellant's injuries could have been sustained in other ways, given that he was a fisherman in Sri Lanka, the judge held that the Appellant's sole concern was "to come to London, rather than simply to travel to a safe place.
8. This was because India was much closer to Sri Lanka, and the Appellant had also not sought asylum in Switzerland or France, and that, "for someone from what would appear to be a poor background, the journey must have been expensive, and unnecessary if his only desire was to seek safety" (paragraph 42). The appeal was dismissed.

Grounds of Application

9. The grounds of application state that the judge misdirected himself as to the standard of proof in asylum cases, she erred in law by making her findings on the Appellant's general credibility before considering the expert evidence, and that the judge failed to make findings on material matters such as the Appellant's sur place activities in taking part in activities on behalf of the British Tamil Forum in the form of attending demonstrations.
10. In granting permission, the Tribunal held that Judge Miller took into account all relevant matters when reaching her findings as to her credibility and it could not be said that Professor Lingam's findings had been taken wrongly by the judge. However, permission was given on one particular point, namely, in relation to the Appellant's sur place activities (at paragraph 18 of the determination) because the Appellant had maintained that he attended a demonstration in the United Kingdom, but no findings were made in relation to this by the judge.

Submissions

11. At the hearing before me on 13th January 2015, there was no attendance by the Appellant and none by any legal representative on his behalf. Nor was any explanation given for this non-attendance. After standing the matter out to the end of the morning's list, I eventually determined to hear it.
12. Mr Tufan, appearing on behalf of the Respondent Secretary of State, stated that whereas there was old authority in the form of the well-known case of **Danian** that sur place activities, even when undertaken solely on the basis of opportunistic involvement, may grant a well-founded fear of persecution, nevertheless, the case of **GJ (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319** was now determinative in respect of a case such as the present.
13. That case made it quite clear that *sur place* activities in themselves could not be the basis of a well-founded fear of persecution. As far as the Sri Lankan authorities were concerned the "real risk of persecution" would lie only with respect to

"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 ..." (see paragraph 7(a)).
14. The Appellant could not remotely be seen as a threat to the integrity of the Sri Lankan state. The same principle was set out at paragraph 8 and paragraph 9 of this country guidance case.

15. Second, the case of **GJ (Sri Lanka)** was subsequently appealed to the Court of Appeal, only for the Court of Appeal to affirm what the Tribunal had established in **GJ**. In **MP (Sri Lanka) [2014] EWCA Civ 829**, Underhill LJ made it clear that

“The clear message of the Upper Tribunal’s guidance is that a record of past LTTE activism does not as such constitute a risk factor for Tamils returning to Sri Lanka, because the government’s concern is now only with current or future threats to the integrity of Sri Lanka as a unitary state; and that is so even if the returnee’s past links with the LTTE were of a kind characterised by UNHCR as ‘more elaborate’.” (See paragraph 50).

No Error of Law

16. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. This is a case where, by his own admission, the authorities had checked on the Appellant for a short period of time, and then this stopped when the war ended, and he was released without charge.
17. Second, the Appellant remained in the country for approximately three years, during which time he did not express any further problems, and was clearly of no further adverse interests to the authorities, before leaving Sri Lanka.
18. Third, the Appellant has maintained involvement in political activity, and claimed to have attended a demonstration, which he did not know the name of or when it took place (see AIR 70 and 73) and he provided no evidence of having been involved in any other demonstration or in any other political activities.
19. But most importantly, the cases of **MP (Sri Lanka) [2014] EWCA Civ 829 and of GJ [2013] UKUT 319** are determinative of the issues before this Tribunal. There is no material error of law in Judge Miller’s determination the conclusion by the judge that the Appellant was more interested “to come to London, rather than simply to travel to a safe place” (paragraph 42) was entirely open to the judge on the basis of the evidence presented.

Notice of Decision

20. There is no material error of law in the original judge’s determination. The determination shall stand.
21. No anonymity direction is made.
- 22.

Signed

Date

Deputy Upper Tribunal Judge Juss

21st January 2015