



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

Appeal Number: AA/07733/2014

THE IMMIGRATION ACTS

**Heard at Newport
On 2 September 2015**

**Decision & Reasons Promulgated
On 24 September 2015**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**M S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy, instructed by Vasuki Solicitors
For the Respondent: Mr I Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) in order to protect the anonymity of the appellant who claims to be a refugee. This order prohibits the disclosure directly or indirectly (including by the parties) of the identity of the appellant. Any disclosure in breach of this order may amount to a contempt of court. This order shall remain in force unless revoked or varied by a tribunal or court.

Introduction

2. The appellant is a citizen of Sri Lanka who was born on 9 January 1988. He entered the United Kingdom on 18 January 2011 with leave as a Tier 4 Student valid until 15 July 2011. That leave was extended on two occasions such that his leave was valid until 31 December 2015.
3. On 25 June 2014, the Secretary of State curtailed the appellant's leave as a student on the basis of unsatisfactory attendance at his college. His leave was curtailed to 29 August 2014.
4. On 19 August 2014, the appellant applied to vary his leave on the basis that his removal to Sri Lanka would breach the Refugee Convention and the ECHR.
5. On 12 September 2014, the Secretary of State refused the appellant's claim for asylum, for humanitarian protection and under Articles 2, 3 and 8 of the ECHR. On that basis, on 12 September 2014 the Secretary of State refused to vary the appellant's leave to remain and made a decision to remove him by directions under s.47 of the Immigration, Asylum and Nationality Act 2006.

The Appeal

6. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 3 February 2015, Judge James dismissed the appellant's appeal on all grounds.
7. Whilst Judge James accepted that the appellant had been a low-level supporter of the LTTE and had been detained and seriously ill-treated by the Sri Lankan authorities in September 2010, the judge found that, having been released, he was of no interest to the Sri Lankan authorities in particular as he had been issued with a passport in order to leave Sri Lanka and also one subsequently in the UK by the Sri Lankan High Commission. Applying the country guidance case of GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 317 (IAC), the judge found that the appellant would not be at risk on return as a low-level LTTE supporter nor on the basis of his claimed *sur place* activities in the UK. As regards the former, the judge did not accept that the appellant was subject to an arrest warrant and therefore would be on a "stop list" if returned to Sri Lanka. As regards the latter, the judge did not accept that the appellant was or would be perceived as a threat to the integrity of Sri Lanka as a single state or as someone who would be perceived to have played a significant role in relation to post-conflict Tamil separatism within the diaspora as a result of his activities in the UK.
8. The appellant appealed to the Upper Tribunal on the basis that the judge's adverse findings failed properly to have regard to GJ and Others. In particular, the judge was wrong to conclude that the appellant was of no interest to the Sri Lankan authorities simply because he had been released

from detention (as he claimed by a bribe) and had been able to obtain a passport both in Sri Lanka and in the UK. The grounds argued that the appellant's account was consistent with the evidence that bribery could result in release from detention, the obtaining of a passport and safe passage through Colombo Airport. Further, as regards GJ and Others, the appellant fell within the risk category set out in para 7(a) of the headnote given his *sur place* activities, including his membership of a proscribed organisation the TGTE and, on the basis of the evidence set out in Appendix C of GJ and Others, that the appellant would be asked questions on return to Sri Lanka which would require him to disclose his LTTE profile including his involvement in *sur place* activities. The judge had failed adequately to consider whether, as a result, he would be perceived as falling within the risk category of someone perceived to be a threat to the integrity of Sri Lanka as a single state or as someone who had played a significant role in post-conflict Tamil separatism in the UK.

9. On 5 March 2015 the First-tier Tribunal (Judge Gibb) granted the appellant permission to appeal.
10. That appeal was initially listed before me on 10 June 2015. In a decision dated 15 June 2015, I concluded that the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of an error of law and the decision was set aside to be remade. My full reasons are set out in that decision and it is unnecessary to repeat them here.
11. Both representatives at that hearing, accepted that certain findings of the judge should be preserved as set out in para 2(i) – (v) of the grounds of appeal, namely that the appellant was an LTTE supporter; his brother and uncle were LTTE members; the appellant was arrested in September 2010 and was detained and ill-treated; the appellant's arrest was as a result of him having provided accommodation for LTTE members; and during the course of his detention the appellant informed the authorities as to the full extent of his involvement with the LTTE.
12. Both representatives acknowledged that at the resumed hearing, on the basis of the evidence, the issues included whether the appellant had been subject to an arrest warrant and, as a result, was on a stop list and what, if any, were the extent of his diaspora activities. Finally, on the basis of the findings, the issue was whether the appellant fell within the risk categories in GJ and Others bearing in mind the Court of Appeal's comments in MP and Others v SSHD [2014] EWCA Civ 829 at [50] that an individual might be perceived as posing a current threat to the integrity of Sri Lanka as a single state even in the absence that he or she had been involved in diaspora activism.
13. The resumed appeal was listed before me on 2 September 2015.

The Resumed Hearing

14. The appellant was represented by Mr Paramjorthy and the respondent by Mr Richards.
15. Mr Paramjorthy relied upon the documentation submitted to the First-tier Tribunal but also sought permission under Rule 15(2A) of the UT's Procedure Rules to rely upon a further bundle of documents ("Bundle B") which included an updated witness statement from the appellant dated 19 August 2015, a letter from the appellant's mother dated 25 August 2015 and, in translation, an extract from a web news report dated 25 June 2015 ("Tamilwin News") together with a number of supporting photographs, in particular at page 7 which was included within the article and said to show the appellant standing on a street corner soliciting signatures for a petition to prosecute the President of Sri Lanka before the International Criminal Court.
16. On behalf of the respondent, Mr Richards made no objection to the admission of this evidence and in the interests of justice I admitted it under Rule 15(2A).
17. Mr Richards also sought to introduce an email exchange and a document headed "bio-data information" relating to the appellant's claim to have lost his documents in the UK and to be seeking replacements. Mr Paramjorthy did not object to the admission of this evidence and I also admitted it in the interests of justice under Rule 15(2A).
18. In addition, the appellant gave oral evidence in which he adopted his statements of 6 January 2015 and 19 August 2015.
19. I will refer to the evidence, oral and documentary, as necessary in reaching my findings below.

The Law

20. The appellant relies upon the Refugee Convention. The appellant must establish that there is a real risk that if returned to Sri Lanka he will be subject to persecution for a Convention Reason, namely his actual or perceived political opinion.
21. Further, the appellant relies on Article 3 and must establish substantial grounds for believing that there is a real risk that he would be subjected to torture or to inhuman or degrading treatment if returned to Sri Lanka.

The Issues

22. On behalf of the respondent, Mr Richards accepted that the appellant had been detained and mistreated in September 2010. However, he submitted that the appellant had not established that he was of any interest to the Sri Lankan authorities in that he had been able to obtain a passport on his release and had left Sri Lanka without any difficulty. He invited me to reject the appellant's account that he had left as a result of an agent and bribes being paid. In any event, this did not explain how he had been able

successfully to apply for a further Sri Lankan passport in the UK in 2014 if he was of interest to the authorities. Mr Richards submitted that it was clear that the appellant's claim for asylum was triggered by the curtailment of his leave to remain as a student. He had not claimed asylum earlier despite having come to the UK in January 2011. Mr Richards submitted that nothing that the appellant had done prior to leaving Sri Lanka would cause him any difficulty on return now.

23. As regards the appellant's claimed *sur place* activities, Mr Richards submitted that the appellant was not an activist. Even if it were accepted that he had, as he claimed, stood on a corner and collected signatures the only photograph he claimed was on the website (at page 7 of Bundle B) only showed him from the side and it was not likely that he would be identified from it. Mr Richards submitted that the letter from the appellant's mother, which claimed that following the publication of this photograph, the authorities had come to his parents' home and threatened him as a result of that if he returned to Sri Lanka was wholly lacking in credibility.
24. Mr Richards submitted that on the basis of GJ and Others the appellant was not someone whom it would be perceived was a threat to the unified state of Sri Lanka or had been involved in diaspora activities sufficient to interest the Sri Lankan state.
25. He invited me to dismiss the appeal.
26. On behalf of the appellant, Mr Paramjorthy relied upon his skeleton argument which he elaborated upon in his oral submissions.
27. First, Mr Paramjorthy invited me to accept the appellant's evidence which, together with the preserved findings of fact, Mr Paramjorthy submitted put the appellant at risk. Mr Paramjorthy submitted that it was not implausible that the appellant had been able to obtain a passport in Sri Lanka and leave the country without difficulty even if he was of interest to the authorities. He referred me to paragraph 27.02 of the *Country of Information Report for Sri Lanka* where it was stated that it was possible to obtain genuine (but fraudulently obtained) passports in any name through bribery. It was consistent with the background evidence that an individual could leave Sri Lanka with the aid of an agent even if of interest to the authorities. As regards the appellant having obtained a passport in the UK, Mr Paramjorthy submitted that there was no evidence to show that the High Commission has any links to the "stop" list for those wanted in Sri Lanka. Mr Paramjorthy relied upon the email exchange, introduced by the respondent at the hearing, to show that the appellant sought a passport in order to obtain a replacement Biometric Residence Permit. On departing through the airport in Sri Lanka through bribery, Mr Paramjorthy referred me to [394] in GJ and Others where that was recognised as a possibility.
28. Mr Paramjorthy submitted that I should find on the evidence that the appellant was subject to an "arrest warrant" and, therefore, would be on a

“stop list”. Mr Paramjorthy submitted that that was both the evidence of the appellant and his mother which I should accept. He pointed out that it was accepted that a copy of an arrest warrant cannot be produced by an individual in usual circumstances.

29. Mr Paramjorthy submitted that the respondent’s reliance upon the appellant’s delay in claiming asylum and s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 as “damaging” of his credibility, could not affect the judge’s findings that were preserved and their relevance seemed to be restricted to assessing the appellant’s *sur place* activities.
30. In relation the appellant’s *sur place* activities, Mr Paramjorthy submitted that the appellant was at risk applying GJ and Others. First, it was not unreasonable that he should be involved genuinely in the activities that he claimed including, but not restricted to, being a member of the TGTE which is a proscribed organisation in Sri Lanka and also collect signatures for a petition to bring the President of Sri Lanka before the ICC. Mr Paramjorthy relied upon the photograph at page 7 of Bundle B which had appeared on a Tamil website. He accepted that the most recent evidence of the appellant’s mother had not been tested by cross-examination, nevertheless he invited me to accept that, looking at all the evidence in the round, and to find that the home of the appellant’s parents had been visited by the authorities as a result of the publication of the appellant’s picture on the website. Mr Paramjorthy submitted that on return to Sri Lanka the appellant would be questioned and he relied upon para 4 of Appendix C of GJ and Others which highlighted that questions of an individual would include his LTTE background. Mr Paramjorthy submitted that the appellant could not be expected to lie about his previous involvement or his *sur place* activities.
31. On these bases, Mr Paramjorthy submitted that the appellant fell within the risk category in GJ and Others in para 7(a) of the head note, namely a person who would be perceived as 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. Further, the appellant fell within para 7(d) on the basis that he was on a “stop” list as a result of there being an extant arrest warrant against him.

Discussion and Findings

32. It is accepted on the basis of the preserved findings that the appellant is an LTTE supporter and that both his brother and uncle were LTTE members. The background to that is that his uncle was killed and his brother has been missing since 2009. Further, it is accepted that the appellant was arrested in 2010 and was detained and seriously ill-treated, indeed tortured whilst in detention by the Sri Lankan authorities. The background to that is that he had been providing accommodation to two LTTE members in 2005. He also had provided low-level support, including

collecting money and information for the LTTE. It is not suggested that he has ever been an LTTE cadre. When one of the individuals was detained, he disclosed that the appellant had provided him with accommodation and as a result of that the appellant was detained for eleven days. The appellant claims that he was beaten and tortured using, for example, metal bars and sticks. There are photographs in the file, showing scarring on the back of the appellant which, it was not suggested before me, are other than consistent with that account. Whilst in detention, the appellant also told the Sri Lankan authorities about his involvement with the LTTE.

33. The appellant claims that he was released after his father paid a bribe to army officers. He was released, the appellant claims, with a reporting obligation back to the police station on a monthly basis. He claims that thereafter he went into hiding and arranged through an agent for a passport and to leave Sri Lanka which he did on 8 January 2011. The respondent argues that it is, in effect, implausible that the appellant would be released with a bribe or could obtain a passport or leave Sri Lanka without difficulty if he remained of adverse interest to the authorities. I do not accept that argument. All three parts of the appellant's account, are in my judgment, consistent with the background evidence concerning what can be done through bribery in Sri Lanka. Release from detention in Sri Lanka by bribery is well-documented (see GJ and others at [424]). Likewise, the obtaining of "genuine" passports in Sri Lanka through bribery is documented at para 27.02 of the *COI Report*. Finally, at [394] of GJ and Others, the Upper Tribunal said this:

"The principal challenge remaining is to the appellant's ability to travel through Colombo airport unhindered, if he were of interest to the Sri Lankan authorities as claimed. Given the substantial sum paid to the agent and the evidence before us on the pervasive bribery and corruption in Sri Lanka, applying the lower standard, we accept this element of the appellant's account."

34. I accept, therefore, that the appellant was released from detention through the payment of a bribe and that his obtaining of a passport and leaving Sri Lanka unhindered is not inconsistent with the authorities having any adverse interest in him.
35. It remains, however, to determine what, if any, that adverse interest would be on return.
36. The appellant's claim is that he is subject to an arrest warrant and he relies upon the evidence of his mother in a letter dated 7 January 2015. In that letter she explains that she attended a demonstration when the British Prime Minister was at the Commonwealth Conference in Sri Lanka on 15 November 2013. She attended because her son (the appellant's brother) was missing. She says that after this the army and police came to their house and threatened her and her husband. She said:

"They also threatened my younger son, they said LTTE are starting again and asked if he was involved in LTTE. They then asked about

[the appellant's] details and they wanted to know what he is doing now.

The army and police showed us a document and I think it is an arrest warrant. They did not give me the document. We got scared and worried for our safety. I said [the appellant] is gone abroad and we have no contact with him. We will inform them and will hand him over once he returned. They said if he come back he will be arrested as they have arrest warrant."

37. Mr Richards submitted that I should not accept this evidence as it was wholly lacking in credibility. Mr Paramjorthy submitted that I should consider the reliability of this evidence in the context of the evidence in the round.
38. That latter approach is the correct approach following Tanveer Ahmed v SSHD [2002] Imm AR 318. I note that there is nothing surprising in there being an arrest warrant issued in relation to the appellant. When he was released, albeit through a bribe, he was subject to reporting requirements which he was, as a result of going into hiding and leaving Sri Lanka, in breach of. It is not suggested by Mr Richards that the appellant (or his family) could in the circumstances of this case have obtained a copy of the arrest warrant. Although the appellant's mother was not sure whether the document which the authorities brought to her house was an arrest warrant, she clearly states that she was told that the appellant was subject to an arrest warrant. There is nothing obviously unreliable about the letter from the appellant's mother. As I have already said, that the appellant remains of interest to the Sri Lankan authorities is not inconsistent with the means by which he left Sri Lanka. The judge accepted the general credibility of the appellant and the truth of his account of involvement with the LTTE and subsequent detention and ill-treatment. I see nothing in the evidence sufficient to lead me to conclude, looking at it all in the round including evidence to which I shall shortly refer, that the evidence of the appellant's mother in this letter is unreliable.
39. On that basis, I accept that the appellant is subject to an arrest warrant.
40. On that basis alone, the appellant falls within the risk category set out in the head note at para 7(d) of GJ and Others as a person who would be on a "stop" list and would, as a result, be stopped at the airport on return and handed over to the appropriate Sri Lankan authorities where, as is accepted in GJ and Others, in detention there is a real risk of serious ill-treatment or harm amounting to persecution or contrary to Article 3 of the ECHR.
41. I turn now to consider the risks to the appellant, if any, based upon principally his *sur place* activities.
42. I accept that the appellant is a member of the TGTE in the UK. There is supporting documentary evidence at pages 26 - 27 of Bundle A and supporting photographic evidence of A's attendance at demonstrations.

The TGTE is a proscribed organisation in Sri Lanka and would, in my view, create a real risk of the appellant being perceived as someone who is involved in diaspora activities which threaten the unitary state of Sri Lanka.

43. Further, at page 7 of Bundle B is a photograph of the appellant standing on a street corner which, he told me, he was doing in order to collect signatures for a petition to indict the President of Sri Lanka before the ICC. He told me in his evidence that the result of whether this was going to happen would be published in the middle of September 2015. He told me that, as a result, at the moment the Sri Lankan government was under pressure because of these activities and that was why he had been threatened.
44. The appellant relies upon a further letter from his mother dated 25 August 2015 at page 4 of Bundle B. There she states:
- “I precisely have to inform to your honour about the incident happening 26.06.2015 Jaffna, Sri Lanka. Sri Lankan CID people came to our house and threatened us to death asking the information about my son [the appellant]. They were very angry on me and my family as they believe that we are withholding all the information about my son.
- They further shouted that my son is active TGTE member in the United Kingdom and do everything that criticises Sri Lanka. They shouted on us they almost killed everybody who criticising the government and soon will be killing my son as well.
- They said my son’s pictures were published on Tamil news websites revealing his activities in the United Kingdom. I could see how they were angry on the way of their talking, how they treat even me was like punishing me like an animal and I could realise how they will torture my son if they caught my son.”
45. Mr Richards submitted that this evidence was not credible. Further, given that the appellant was photographed with only the side of his face showing, he would not be identified by the Sri Lankan authorities from the photograph that appeared on the website.
46. I accept the appellant’s membership of the TGTE. Further, the photographs show the appellant involved in demonstrations against the Sri Lankan government in the UK. I further accept that the photograph at page 7 of the bundle shows the appellant involved in collecting signatures for a petition to indict the President of Sri Lanka before the ICC. I also accept that the photograph appeared on a Tamil website as part of an article describing the campaign of the TGTE against the President of Sri Lanka. Whilst the article does not identify the appellant by name, there is a photograph of him which, at least in part, showed his face. It is a very real possibility that the appellant could be identified from this photograph. It is part of the background evidence, which was not doubted before me by Mr Richards, that the Sri Lankan authorities engage in sophisticated surveillance of the Tamil diaspora particularly in the UK (see, e.g. GJ and others at [430]). Applying the lower standard, in my judgment, there is a

real risk that the appellant was recognised in this photograph (and indeed at other demonstrations within the UK) through the surveillance of the Sri Lankan authorities. The evidence of the appellant's mother is, of course, consistent with that. Again, applying Tanveer Ahmed, I must consider the reliability of that evidence in the round. There is again nothing in that evidence which, it was suggested, was patently inconsistent with its reliability. As a result, I accept that evidence concerning the appellant's involvement with the TGTE in the UK which I have no reason to consider, given his history, is other than genuine and I also accept that he has come to the attention of the Sri Lankan authorities as a result.

47. As regards the issue to the appellant of a passport by the Sri Lankan High Commission in the UK, it is clear from the e-mail evidence that the appellant applied for this in order to obtain a new Biometric Residence Permit. Mr Richards submitted that the authorities would not have issued this passport if he were of any interest to them. Mr Richards did not draw my attention to any evidence that suggested that the High Commission would be aware of the appellant's past history or would not, even on the face of that, issue him with a passport in the UK. I accept Mr Paramjorthy's submission that it is not inconsistent with the appellant's account to be of interest to the Sri Lankan authorities that he was issued with a passport in the UK.
48. Mr Richards also placed reliance upon s.8 of the 2004 Act. It is undoubtedly the case that the appellant delayed claiming asylum, having entered the UK in January 2011, until June 2014 when his leave as a student was curtailed. The appellant explained in his evidence that the agent who had sent him to the UK had advised him not to seek asylum when he arrived. He was told that he could continue to study in the UK anyway. That was why he had not asked for asylum on arrival. He told me that when he received the Home Office letter saying that he could not study, he realised he could not continue to study and he was advised to approach a solicitor to seek asylum. He told me that he feared going back to Sri Lanka and that was why he claimed asylum.
49. I accept that the appellant's delay in claiming asylum is, as a result of s.8 of the 2004 Act, "damaging" of his credibility. It is relevant in assessing whether his claim is a genuine one. However, in JT (Cameroon) v SSHD [2008] EWCA Civ 878, the Court of Appeal concluded that the behaviour was only "potentially" damaging of an individual's credibility and was a factor to be taken into account in making an overall or global assessment of an individual's credibility. Whilst I, therefore, take the appellant's delay into account, I bear in mind his explanation and, in the light of all the evidence and the reasons I have given, I reject the submission that the appellant is not a genuine asylum seeker and someone whose evidence is not entitled to credit.
50. The relevant risk category in GJ and Others is set out at para 7(a) of the head note as follows:

“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.”

51. In applying that risk category, I bear in mind what was said by Underhill LJ in MP and Others at [50] that the category is properly understood as whether an individual would be perceived as a “current threat to the integrity of Sri Lanka as a single state” which could be established even in the absence of diaspora activism.
52. In this case, however, the appellant has established both diaspora activity and also a past history of involvement with the LTTE.
53. His activities in the UK alone would, in my judgment, lead him to be perceived as someone falling within the risk category in 7(a) of GJ and Others. He is involved with a proscribed organisation, taking part in demonstrations in favour of Tamil separatism and is assisting in compiling a petition seeking to indict the President before the ICC.
54. I accept Mr Paramjorthy’s submission that the appellant is at risk on return to Sri Lanka at the airport about being questioned of his political activities (see the evidence of Malcolm Lewis at para 4 of Appendix C of GJ and Others). The appellant cannot be expected to dissemble as to his political views or activities (see RT (Zimbabwe) and Others v SSHD [2012] UKSC 38).
55. In my judgment, on return to Sri Lanka the appellant will be of interest to the Sri Lankan authorities because of his activities in the UK which I accept they are aware of and which, in any event, he cannot be expected to not disclose in answer to questions at the airport. He will, as a result, be perceived as an individual who threatens the unitary state falling within para 7(a) of GJ and Others and will be subject to detention and the real risk of persecution or serious ill-treatment contrary to Article 3 as a result.
56. For these reasons, I am satisfied that the appellant has established that his return to Sri Lanka will breach the Refugee Convention and Article 3 of the ECHR.

Decision

57. The decision of the First-tier Tribunal to dismiss the appellant’s appeal involved the making of an error of law. That decision was set aside for the reasons set out in my decision of 15 June 2015.
58. I remake the decision allowing the appellant’s appeal on asylum grounds and under Article 3 of the ECHR.
59. No reliance was placed on Article 8 before me.

Signed

A Grubb
Judge of the Upper Tribunal