



IAC-FH-NL-V1

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

Appeal Number: AA/07909/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 10 September 2015**

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

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

VM

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr. C. Avery, Home Office Presenting Officer

For the Respondent: Mr. R. Spurling of Counsel

DECISION AND REASONS

1. I make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Disclosure or publication of documents or information likely to lead members of the public to identify VM is prohibited.
2. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Scott dated 7 April 2015 who allowed VM's appeal against the Secretary of State's decision to refuse to grant asylum.

3. For the purposes of this decision, I refer to VM as the Appellant and to the Secretary of State as the Respondent, reflecting their positions as they were before the First-tier Tribunal.
4. Permission was granted as it was arguable that the judge did not adequately explain why the Appellant was perceived by the authorities as having a significant role in the cause of Tamil separatism within the diaspora, and therefore fell within the risk category set out in GJ (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC).

Submissions

5. Mr. Avery submitted that paragraph [30] of the decision contained all of the judge's reasoning for finding that the Appellant met the criteria in GJ. This was a bald statement with no real reasoning. He submitted that the Appellant had attended a number of demonstrations in the United Kingdom but these were not specifically linked to the LTTE or Tamil separatism. He submitted that the judge should have assessed whether someone with the Appellant's history would have been assessed as a threat to the Sri Lankan state. The Appellant had had minimal involvement in the diaspora, and it was hard to see how he fitted into the "template" of GJ. He submitted that the judge had not understood the headnote to GJ. Following paragraph (9) of the headnote it was possible that the Appellant would potentially be at risk of monitoring by the security services after his return but how this had become a real risk of persecution was not clear from the judge's reasoning.
6. Mr. Spurling submitted that the grounds of appeal were no more than a disagreement with the judge's findings. The judge had found the Appellant credible which was relevant to his finding that he fitted into the risk category set out in GJ. When the decision was read as a whole and in a common sense way, the judge's conclusions were rational. The judge had summed up his conclusion in paragraph [30], but it was not enough to look only at paragraph [30] and ignore the rest of the decision. The judge had not just taken into account the Appellant's low level involvement in the LTTE and his participation at demonstrations, but had taken into account much more than that.
7. I was referred to paragraph [23] where the judge finds the Appellant credible. He finds his evidence consistent with that of his mother. In paragraph [26] he relies on the evidence of the Appellant's mother who has been shown photographs of the Appellant attending demonstrations in the United Kingdom by the CID in Sri Lanka. It was submitted that the judge was entitled to take this significant level of CID interest in the Appellant into account.
8. I was referred to paragraph [18] which refers to the evidence of the Appellant's mother and the fact that the Appellant escaped from detention. It was submitted that the authorities had an undischarged interest in the Appellant. When the CID visited, not only did they make

enquiries of the Appellant's mother but they also threatened her. This is referred to in paragraph 11 of the Appellant's mother's statement, paragraph 3 of the Appellant's statement and paragraph 7 of the witness SR's statement. It was submitted that although this had not specifically been mentioned by the judge, he had found the evidence of these witnesses credible, and he did not have to repeat all of the evidence in the decision.

9. It was submitted that what the authorities thought the Appellant was doing in the UK was relevant. I was referred to paragraph 12 of the Appellant's witness statement, and paragraph 12 of the Appellant's mother's witness statement, where it is said that the CID accused the Appellant of being an LTTE activist. I was referred to questions 339 and 274 of the asylum interview where the Appellant said that he was suspected of LTTE involvement. This evidence had been found credible by the judge. I was referred to paragraph 7(a) of the headnote to GJ in relation to the perception of an individual by the authorities. I was referred to paragraph 325 of GJ for the extent to which past links to the LTTE predicted future adverse interest. In relation to paragraph 336 of GJ, it was submitted that the judge had not found that attendance at UK demonstrations alone had caused the Appellant to be at risk.
10. I was referred to paragraph 50 of MP and NT (Sri Lanka) [2014] EWCA Civ 829 (paragraph 17 of the skeleton argument before the First-tier Tribunal). It was submitted that if the CID showed that for whatever reason they had a strong adverse interest in an individual this was capable of supporting the inference that the government might regard him as a threat. I was referred to question 228 of the asylum interview regarding how the CID became aware of the Appellant in the first place. It was submitted that the judge was aware that the Appellant had been specifically identified and detained as a result. I was referred to paragraphs 390 to 397 of GJ. While it was submitted that the situation of GJ himself was not exactly the same as the Appellant, applying them risk factors in GJ came to the same result.
11. It was submitted that the judge was entitled to find that the Appellant was at real risk and that he fitted within paragraph 7(a) of the headnote to GJ. The judge had reached this conclusion giving adequate reasons, and his findings were rational.
12. In relation to the specific grounds it was submitted that paragraph 6(i) was wrong and that the Appellant having escaped was not the only evidence in the case. In relation to paragraph 6(ii), the Appellant had said not only that he had attended demonstrations, but that he was seen as a supporter of the LTTE. It was submitted that there was plenty of evidence to support the fact that demonstrations were monitored and it was uncontroversial that the authorities were concerned with the diaspora in London. I was referred to paragraph 303 of GJ. It was submitted that it was absurd to play with the language as had been done in paragraph 6(iv) of the grounds and it was clear that the authorities took demonstrations seriously. In relation to paragraph 6(vi), it was submitted that the judge

had not found that he was at risk purely because of his diaspora activities but this was part of a basket of evidence which had been accepted by the judge.

13. In conclusion it was submitted that read as a whole the decision was reasoned and rational. The judge had found the Appellant to be a credible witness and the challenge from the Respondent was no more than a disagreement with his findings.
14. In response Mr. Avery submitted that with reference to paragraph 325 of GJ the Appellant's activities in the LTTE were minimal. With reference to paragraph 336 of GJ there was nothing in the Appellant's evidence to suggest that he was working for Tamil separatism. It was hard to see how someone with the Appellant's profile could be equated with Tamil separatism. He submitted it was not just a challenge on the grounds of perversity but also that there was a flaw in the judge's reasoning as he had failed to identify in paragraph [30] what elevated the Appellant to somebody at risk of persecution.
15. Mr. Spurling submitted that there was it was clear from paragraph [30] that the judge found that there were factors which "elevated" the Appellant and referred to the fact that the evidence showed that the Appellant was perceived as being involved in the cause of Tamil separatism.

Error of law decision

16. Paragraph (7)(a) of the headnote to GJ provides:

"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."

(The full headnote is set out at paragraph [29] of the decision.)

17. Paragraph [30] of the decision states:

"In the present case there is no evidence to suggest that the Appellant is on a "stop" list which would place him at risk on return to the airport in Sri Lanka. Given the continuing interest of the Sri Lankan authorities in the Appellant, it is quite possible that his name appears on a "watch list", but again there is no evidence to that effect. However as GJ makes clear, on return to Sri Lanka the Appellant would be required to go to a named address and his arrival in his home area would be verified by the CID or police within a few days thereafter. In view of the continued adverse interest in him, not only for having "escaped" from detention in 2010, but also for his activities in support of a Tamil organisation in the United Kingdom, I accept that he is perceived by the authorities as having a significant role in the cause of Tamil separatism within the diaspora. In

these circumstances, I find that there is a real risk that the Appellant would be detained and subjected to ill-treatment amounting to persecution, as happened in 2010.”

18. I find that this paragraph makes clear that the judge finds that the Appellant is “perceived by the authorities as having a significant role in the cause of Tamil separatism within the diaspora” not only because of his activities in support of a Tamil organisation in the United Kingdom but also, and significantly, in view of the continued adverse interest in him. The judge refers twice in this paragraph to the continuing interest of the Sri Lankan authorities in the Appellant.
19. It is not enough to read this paragraph in isolation, but this paragraph must be read in the context of the judge’s earlier findings set out in paragraphs [23] to [27].
20. The judge found the evidence of the Appellant, his witness SR, and the Appellant’s mother to be reliable [23]. The Respondent accepted that the Appellant was a member of the LTTE between 2002 and 2004. The judge found that the Appellant continued to assist the LTTE after that. The judge found that he was arrested and detained for two months in 2010 and tortured during that period [24]. The judge found that the Appellant was released from detention on payment of a bribe [25].
21. The judge found that the Appellant had attended demonstrations in the United Kingdom in support of the Tamil cause [26]. He found that the CID visited the Appellant’s family home to look for him and that a photograph of the Appellant was shown to his mother [26]. He finds that the authorities in Sri Lanka have maintained an interest in the Appellant to the extent of photographing him at demonstrations in the United Kingdom and showing these photographs to the Appellant’s mother on visits to the family home. They have also threatened the Appellant’s mother as set out in the witness statements of the Appellant, SR and the Appellant’s mother, which evidence the judge found credible, and he refers to these witness statements in paragraph [26].
22. When reading the decision as a whole, it is clear that when the judge refers in [30] to the continuing interest of the authorities in the Appellant, he has in mind his earlier findings [23] to [26]. Paragraph [30] should not be read in isolation, especially given that it specifically refers to the continuing interest of the Sri Lankan authorities in the Appellant, the findings in respect of which are set out earlier in the decision.
23. In relation to the specific grounds, it is not only the finding that the Appellant escaped from detention which is the reason for finding that he fits into the risk factors identified in GJ (6(i)). This is to misread the judge’s conclusions, which as stated above, significantly include the finding that the authorities are still interested in the Appellant. In relation to attendance at demonstrations in the United Kingdom, it is uncontroversial to state that the authorities have an interest in those who attend such

demonstrations. In the Appellant's case the judge found that photographs of him attending such events have been shown by the authorities to his mother in Sri Lanka (6(ii)). In relation to paragraph 6(iii), I have found that by reading the decision as a whole adequate reasons have been given.

24. I do not find that paragraph 6(iv) has any merit. In relation to paragraphs 6(v) and 6(vi), the judge found that the authorities had attended the Appellant's home so it is not right to describe the visits as "alleged", and as confirmed at the hearing there was no challenge to the findings of fact in the decision. It is not the presence or otherwise of the Appellant's name on a "watch list" which leads the judge to conclude that the Appellant would be at risk on return, nor is it only the Appellant's diaspora activities which the judge has taken into account.
25. I find that taken as a whole, the decision contains adequate reasons for the judge's finding that the Appellant fits into the risk category identified at paragraph 7(a) of the headnote to GJ and therefore will be at risk on return to Sri Lanka. Paragraph [30] is not to be read in isolation.

Notice of Decision

The decision of the First-tier Tribunal does not involve the making of an error of law. The decision of the First-tier Tribunal stands.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 24 September 2015

Deputy Upper Tribunal Judge Chamberlain