



IAC-TH-WYL-V1

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

Appeal Number: AA/10414/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8 December 2015**

**Decision & Reasons Promulgated
On 21 December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE APLEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DT

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms A Everett, Home Office Presenting Officer

For the Respondent: Mr G Denholm, Counsel

DECISION AND REASONS

1. The appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which the parties were known before the First-tier Tribunal, with the Secretary of State referred to as “the respondent” and DT as “the appellant”.
2. The appellant is a citizen of Sri Lanka who appealed against a decision made by the respondent on 13 November 2014 to remove him from the United Kingdom following the decision on the same date to refuse to

recognise him as a refugee or grant him Humanitarian Protection. He also applied on human rights grounds. His appeal was heard by Judge of the First-tier Tribunal Boyes who in a decision promulgated on 19 May 2015 allowed it on both asylum and human rights grounds. The judge found that in terms of the application of the country guidance case on Sri Lanka: **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)** there will be a real possibility that the appellant would be perceived to be someone working for Tamil separatism, and to have a significant role in relation to post-conflict Tamil separatism, especially as he has been involved in an organisation now treated as a terrorist group by the Sri Lankan state, and as the authorities may well have evidence of this. Whilst on its own account he cannot be said to be a prominent member, the judge found what was important when assessing future risk is the perception of the authorities. In this appellant's case the judge found that the authorities believe that he was involved with the LTTE previously and that their perception may, of course, be different to the reality. The judge also found that the appellant fell within a risk category identified in **GJ** and also that since the promulgation of that decision the Sri Lankan Government has enacted legislation proscribing a wide range of pro-Tamil groups. He found that whilst there are no reports before him of arrests having yet been made on that basis, involvement in such groups may well place an individual such as this appellant at even greater risk of arrest, detention and torture. Before concluding that there was no sufficiency of protection available as the appellant fears state actors and no prospect of internal relocation the judge summarised his conclusions at paragraph 96 of his decision which states:-

“On the basis of all of the evidence before me, I am satisfied that there is a serious possibility that if the Appellant were to return to Sri Lanka that he would be of adverse interest to the authorities. In light of evidence, I consider that there is a serious possibility that he will be arrested and detained because of his perceived sympathies, if not at the airport on arrival, then subsequently. I accept that there is a real risk of him being tortured at the hands of the Sri Lankan authorities and, further, that the conditions in which he would be held would be such that there is a real risk that they would amount to inhuman and degrading treatment.”

3. The respondent sought permission to appeal which was originally refused but on a renewed application granted by Judge of the Upper Tribunal Grubb on 18 August. His reasons for so doing are:-
 - “1. The First-tier Tribunal (Judge Boyes) allowed the appellant's appeal on asylum grounds finding that he would be at risk of persecution if returned to Sri Lanka.
 2. It is arguable that the Judge failed to give adequate reasons for, and/or reached an irrational, finding that the appellant fell into the risk category in para 7(a) of the country guidance case of **GJ and others**. Further, in finding that the appellant was at risk, in any event based upon evidence post-dating **GJ and others** (see paras 65-67 summarised at 68; and 69-70), it is arguable that the Judge failed adequately to explain why he would be at real risk despite his finding that the

appellant had never been an LTTE fighter or engaged at a senior level in any pro Tamil group.

3. It is also arguable that the Judge may have misread and/or interpreted the Ceylon Today article in reaching his credibility finding.
 4. For these reasons, permission to appeal is granted.”
4. Ms Everett argued that the judge at the First-tier Tribunal hearing materially erred in departing from the country guidance case law of **GJ** without providing good reasons. She referred me to paragraph 81 of the decision where the judge found that:-

“81. Even though the Appellant has never been a LTTE fighter, or engaged at a senior level with any pro Tamil/LTTE related group, from the country information before me it seems that there may also be other factors at play when the Sri Lankan government decide to detain and ill-treat an individual. I note that it is recorded in the Human Rights Watch World Report 2014, referred to in the CIG report, that torture is used by the Sri Lankan government not only to extract confessions but also to *“instill terror in the broader Tamil population to discourage involvement with the LTTE.”* Therefore, even though the Appellant is not a prominent figure there is nothing implausible about him being detained and tortured in the manner that he claims.”

She argued that the judge has erred at paragraph 95 of his decision in concluding that the appellant falls within a risk category identified in **GJ** as he has not identified which category he finds the appellant to fall within. The judge has found at paragraph 91 that the appellant was involved in helping the LTTE gather information in 2008 and that he attended pro-Tamil demonstrations in the United Kingdom. Neither of these findings bring the appellant within the categories identified in **GJ**. The finding on the credibility of the appellant’s recent detention and torture should properly have been conducted through the application of the country guidance case law. Whilst the judge may be entitled to find that individuals who are outside the categories in **GJ** may be at risk good reasons must be given to establish this and the judge had cited no evidence, save for the appellant’s own account, to establish that the Sri Lankan authorities will detain and torture individuals unless they are or are perceived to be a threat to the integrity of Sri Lanka as a single state. The finding at paragraph 95 of the decision that the appellant will be at even greater risk of arrest, detention and torture due to involvement with a proscribed organisation is unsupported by any background evidence and is insufficient to found a further risk category outside those within **GJ** itself. On the findings of fact in this case the judge has failed to give adequate reasons why attendance as a volunteer security person at a single demonstration organised by the transitional government of Tamil Eelam would lead to a perception by the Sri Lankan authorities that the appellant is a current threat to the unity of the state, particularly in view of the government’s sophisticated intelligence gathering machine. It is also notable that the judge, in reaching this finding has not given consideration to the reasons why the appellant was able to pass through Colombo

Airport without incident on his return to Sri Lanka only twenty days prior to arrest at a checkpoint.

Secondly it was argued that the judge materially erred in mis-reading the background evidence relied upon by the appellant. At paragraph 76 the judge relies on the article from Ceylon Today in considering the appellant's evidence that every vehicle at Omanthai checkpoint was stopped. The judge found that whilst this article was written some months after the appellant claims to have been stopped there, it suggests that there had been a gradual increase in the activity at the checkpoint over the previous year. She submitted that the relevant extract from the article does not support the finding that there were increased security checks in September 2013. The judge's mis-interpretation of this evidence has led to a positive credibility finding on his detention in September 2013 which is, as a consequence, flawed.

I was invited to remake the decision in this appeal and dismiss it.

5. Mr Denholm argued that there was no error of law within the decision and that it should stand.

6. I accept his submission.

7. Whilst not specifically referring to it it is plain that the judge here had in mind, in considering the risk factors into which the appellant fell as described in **GJ**, paragraph 7(a) of the headnote which states:-

“(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.”

8. It is though perhaps easier in this appeal to deal with the second of the respondent's two grounds first.

9. The Ceylon Today article can be found at page 20 of the appellant's main bundle. It is dated 29 March 2014 and states:-

“The Omanthai checkpoint in Vanni is now fully operational and vehicles entering via A9 highway to the Jaffna Peninsula and the vehicles leaving the Peninsula are now being subjected to checking at the Omanthai checkpoint, according to Military Spokesperson Bridger Ruwan Wannigasooriya.

“A year ago the checkpoint was not fully functional and random checks were done. Due to the present security situation and a possible re-grouping of the former rebel group the Liberation Tigers of Tamil Eelam (LTTE) we have increased the security at the checkpoint,” he said.

Wannigasooriya added that a few person have been arrested and a few other who are complicit in terrorist activities have also been apprehended.

“The army carries out random spot checks which is extremely necessary. During the past one year the frequency of checking had decreased and now checks are conducted regularly by the security forces,” he said. When asked if foreign passport holders too will be subject to checking, he added nobody can be discriminated when it comes to security. The national security is important and if a vehicle is stopped and there are foreign nationals travelling they will be checked too.”

Mr Denholm argued, and I accept, that this ground reads as a credibility challenge. On proper consideration of the Ceylon Today article the ground is misconceived as the appellant’s evidence is consistent with and falls into the context of what is stated within the article. He referred me to the appellant’s interview where he stated in answer to question 80 that it was at the Omanthai sentry point that he was captured. He described it as an “army checkpoint there every vehicle would be stopped and vehicle registration would be noted and also passengers would be noted”. He also said that he was not formally arrested but was asked to stay in a small room and then he was taken in a vehicle to a camp. This was an appellant who in 2008 had been involved in assisting an LTTE member albeit that he is not one himself. He had entered the United Kingdom as a student in 2010 and returned in 2013 on holiday with friends when he was stopped at this checkpoint and subsequently detained and tortured. The issue was dealt with in his own witness statement which was broadly consistent to his replies in his asylum interview and referred to within the respondent’s own refusal letter at paragraphs 25 to 28. Those paragraphs state:-

- “25. When asked about Omanthai checkpoint point, you claim that every vehicle would be stopped and vehicle registration along with passengers would be noted.
26. Objective information states:
27. “The team from the High Commission noted during their visit that there were no checkpoints in Jaffna town. The drive along the A9 from Jaffna to Vavuniya revealed only three checkpoints, the first at Elephant Pass, the second just south of Kilinochchi, and the third at Omanthai. At the first two, barriers were raised to allow vehicles through without stopping. The Omanthai checkpoint was the only checkpoint where vehicles were made to stop and occupants to produce documentation. NGO and humanitarian agencies told us that this was mainly to check whether the foreign employees of these organisations had the required MoD clearance to enter/remain in the Vanni. Locals were allowed to pass freely”. (COIS - Sri Lanka dated 07/03/2012 paragraph 25.09).
28. The objective information above states that locals were allowed to pass freely, your claim that every vehicle would be stopped is therefore considered consistent.”

10. I find from the evidence within those paragraphs of the refusal letter that it effectively supports the appellant's position and that accordingly the evidence to be found at paragraph 70(iv) of the judge's decision which states:-

"That Omanthai check point is fully operational once more as of March 2014. A year prior to that checks were only randomly undertaken there."

and also at paragraph 76:-

"In terms of the Respondent's assertion that individuals were able to travel freely through the Omanthai checkpoint, the background information relied upon by the Respondent appears not to be up to date in this respect. There is a report from Ceylon Today dated the 29 March 2014 [page 20 appellant's background information bundle] which states that the checkpoint is once again fully operational. Whilst this article was within some months after the Appellant claims to have been stopped there, it suggests that there had been a gradual increase in the activity at the checkpoint over the previous year. Therefore there seems to me nothing implausible about the Appellant's claim that he and his friends were stopped at that checkpoint."

was capable of being relied upon. The judge was entitled to conclude, and certainly he has not erred, in finding that at the time of the appellant's arrest the Omanthai checkpoint was partly functional. This is evidence supporting the appellant's claim.

11. Beyond that this is an appellant who has been both arrested and tortured. There is accepted evidence that his family has been approached and arrested by the authorities in looking for him. This evidence of past persecution or serious harm is a serious indication of the appellant having a well-founded fear of persecution or a real risk of suffering serious harm upon return. In short an indicator of future risk. It should be noted that within the respondent's refusal letter he was given the "benefit of the doubt" in relation to the issue of continuing interest in him by the Sri Lankan authorities.
12. It is not a material error for the judge to fail to identify the precise paragraph of the risk category the appellant falls within. The evidence in the appellant's favour to be gleaned from paragraphs 82 (re: detention and torture), 83 and 92 (re: escape via the payment of a bribe and not official release), 84 and 85 (re: activities within the diaspora), 86 (re: evidence of the Sri Lankan authorities being aware of the appellant's participation in the demonstrations in the United Kingdom) and 92 (re: the fact that the authorities are still looking for the appellant) are all factors which entitled the judge to conclude that the appellant would be at risk if returned to Sri Lanka for the reasons set out and referred to in paragraph 7(a) of the headnote to **GJ**.
13. I find that the judge has correctly considered the totality of the evidence that was before him and come to conclusions that were open to be made on it. The factors that he has found pertinent to this particular appellant are such that he will be at risk, as found, if returned to Sri Lanka. The

grounds put forward by the respondent do not amount to a material error of law.

14. Having carefully considered the oral and written evidence the judge was entitled to come to the conclusions that he did.

Conclusions

15. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
16. I do not set aside the decision.

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 their 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 10 December 2015.

Deputy Upper Tribunal Judge Appleyard