



IAC-AH-SAR-V1

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

Appeal Number: AA/02564/2015

THE IMMIGRATION ACTS

Heard at Field House

On 3 March 2016

**Decision &
Promulgated**

On 6 April 2016

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

**MR MOHAMED RIYAS ABDUL MUTHALEF
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T C N Kumudusen, Legal Representative

For the Respondent: Mr C Avery, a Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant against the First-tier Tribunal's decision dismissing the appellant's appeal against a decision of the respondent, taken on 30 January 2015, refusing the appellant's claim for asylum.

Background Facts

2. The appellant is a citizen of Sri Lanka who was born on 10 April 1986. The appellant applied for a Tier 4 Student visa to come to the United Kingdom on 11 August 2009. This was granted on 20 August 2009 valid from 28 September 2009 to 12 February 2012. The appellant applied for further leave to remain as a Tier 4 Student on 29 November 2011 and this was granted until 17 June 2012. On 13 March 2012 the appellant applied for leave to remain as a Tier 1 post-study worker which was granted until 23 July 2014. On 28 March 2014 the appellant claimed asylum. The respondent refused that application because the respondent did not accept the appellant's account of his involvement with a non-governmental organisation ("NGO") and his detention in Sri Lanka. The respondent did not consider that the appellant fell into any of the categories of members of the Sri Lankan diaspora who are at risk on return.

The Appeal to the First-tier Tribunal

3. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 17 July 2015 First-tier Tribunal Judge H Clark dismissed the appellant's appeal. The Tribunal found that, despite having some concerns about the plausibility of the appellant's account of his detention, mistreatment and release, there was a reasonable chance that it had occurred and therefore that the appellant was of interest to the Sri Lankan authorities in 2012, was beaten during his interrogation and released on payment of a bribe after five days. The First-tier Tribunal judge, however, found that the appellant would not be at risk on return to Sri Lanka. The judge did not accept that the authorities have shown a continued interest in the appellant and thus the judge rejected the evidence of the appellant's father to that effect. The judge did not consider that it was reasonably likely that the appellant faces outstanding arrest warrants or court summonses connected to any political activities or that he would be on a stop list such as to expose him to a risk on the basis of his imputed political opinions on return to Sri Lanka.

The Appeal to the Upper Tribunal

4. The appellant sought permission to appeal to the Upper Tribunal. On 9 September 2015 First-tier Tribunal Judge Lever refused permission to appeal. The appellant renewed his application for permission to appeal to the Upper Tribunal and on 5 November 2015 Upper Tribunal Judge Gill granted permission to appeal. The grant of permission sets out that the judge may have erred in his assessment of the future risk. Thus, the appeal came before me.

Summary of the Submissions

5. The grounds of appeal are lengthy as were the oral submissions. I have summarised the arguments and have considered related grounds together.

The appellant's submissions

6. **Lack of documentation and interest in the appellant.** The grounds of appeal assert that the judge erred when making findings that, *"given the lack of any documentation confirming that the appellant is the subject of either an arrest warrant or that he has been issued with court summonses"*, there was no ongoing interest in the appellant. It is asserted that the findings are against the objective evidence and the country guidance. Reference is made to the Country of Origin Report, Sri Lanka 2011, BHC letter of 14 September 2010 where it is reported that it is difficult for the accused to be able to obtain a copy of his/her own arrest warrant. It is asserted that as the appellant is unable to obtain a copy of the arrest warrant he cannot be prejudiced for this. Mr Kumudusen submitted that credibility is not in dispute in this case; the issue focuses on whether or not the judge assessed the risk on return properly. He referred to paragraph 55 of the decision and submitted that the judge, having accepted credibility, was wrong to expect the appellant to submit a warrant of arrest. He referred to the grounds of appeal and the COI Report at paragraph 10.1.3. He asserted that it was not reasonably practicable to obtain an arrest warrant. He submitted that the judge erroneously concluded that the absence of an arrest warrant meant that the appellant should be treated as a person who was not at risk on return to Sri Lanka. He referred to paragraph 56 of the decision and submitted that there was evidence that the family were continuously under threat and that that was not disputed. I asked Mr Kumudusen where it was in the decision that the judge accepted this. He responded that the judge did not officially accept that there was an ongoing interest in the appellant. He submitted that there is no requirement for corroborative evidence. With regard to the court summons he submitted that the objective evidence suggests that arrest of LTTE members is often without an arrest warrant. If the authorities had arrested him without a warrant then there would be no court involvement but when they failed to find the appellant their final option would be an order from a court. He submitted that it was possible that at that time the authorities may have been trying to get him and to kill him without involvement of the court. He referred to paragraph 275 of **GJ** and asserted that this supported the submissions made. It is asserted that the judge erred as she failed to consider the appellant's claim with anxious scrutiny as she has failed to consider that the appellant explained that the authorities have continued to visit his home and continue to make enquiries about him

7. **The appellant's wife's departure.** It is asserted that the judge's findings that the appellant will not face persecution on his return to Sri Lanka because the appellant's wife did not face any problems in leaving Sri Lanka is against the objective evidence and country guidance. Reference is made to the COI March 2012 Report. The appellant's wife did not have any problems with the authorities in Sri Lanka and was not subjected to an arrest warrant; hence she did not have any problems leaving Sri Lanka. Mr Kumudusen submitted that the judge was wrong to consider that because the appellant's wife could travel without any problems that there was no ongoing risk to him on return to Sri Lanka. He submitted that the appellant's problems go back to 2006. His wife had no connection with the appellant at that time. He submitted that the appellant's wife using her own passport had no relevance; she was not a person with whom the authorities had any interest. In response to the respondent's submissions Mr Kumudusen accepted that the judge was entitled to make the findings regarding the appellant's wife's departure from Sri Lanka but that what went wrong was that the relevant factors were not considered. He asserted that there is no way to know whether or not the authorities knew that she is his wife. In the absence of that fact the benefit of the doubt should be given. Mr Kumudusen submitted that the appellant and his wife married in 2011 which is before he was detained but that they were looking for the appellant because of his activities prior to his marriage to his wife.
8. **The delay in claiming asylum.** It is submitted that the judge erred as she assessed the appellant's further risk of persecution based on the appellant's delay in claiming asylum. It is asserted that the judge failed to consider the explanation given by the appellant for the delay. Reliance is placed on the case of **JT (Cameroon) v Secretary of State for the Home Department [2008] EWCA Civ 878** which held that a global assessment of credibility is required. He submitted that the judge applied Section 8 finding that the delay in claiming asylum adversely affected the appellant's credibility. He submitted that this was illogical as the judge had accepted the appellant's credibility overall. He submitted that the judge had not taken the appellant's explanation into account that he had valid leave and had medical evidence confirming his torture.
9. **Own assumptions.** The grounds assert that the judge erred by making findings based on her own assumptions. The judge made findings that *"the Sri Lankan government can be expected to know that the appellant has not been engaged in LTTE activities in the diaspora... No explanation has been given as to why the authorities would have waited until early 2014 to issue court summonses as opposed to the immediate aftermath of his escape."* It is asserted that it is unsafe for a decision maker to reject evidence simply because he believes that the appellant or other parties would have acted differently in the circumstances. Reliance is placed on **MM (plausibility (DRC)) [2005] UKIAT 00019**.
10. **Supply of resources.** It is submitted that the judge drew support for her finding that the appellant will not be at risk because of the findings of the

Upper Tribunal in **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) (“GJ”)** with regard to the second appellant in that case. It is asserted that the appellant is more in line with the first appellant in **GJ** on the basis of supplying resources rather than the first appellant who was only supplying manual labour. Mr Kumudusen referred to paragraph 55 of the decision and submitted that it was clear that the appellant was a person who was perceived to have a connection with the LTTE by providing resources although the appellant did not provide any resources to the LTTE. He asserted that there must be a presumption that the authorities were targeting him at that point because they suspected him of providing resources. On the basis that the appellant’s credibility was accepted he asserted that the appellant fell in this category in **GJ**.

11. **Release as a result of bribery.** It is asserted that the judge records the evidence that the appellant’s release by bribery was to be recorded as an escape yet the judge made no clear findings on whether she rejects or accepts this crucial aspect of the claim. It is further asserted that the judge failed to assess this aspect of the claim in light of the evidence before him in **GJ** which supported the view that release by bribery was likely to be regarded as an escape. Reliance is placed on paragraph 146 of **GJ**. It is asserted that the expert evidence of Mr Punethanayagam where he gives evidence that bribery is very common in the IDP camps as well as detention centres and that such cases would normally be recorded as escape from detention in the database of the police. Mr Kumudusen submitted that the judge had not set out sufficient reasons for his findings. He asserted that if the judge accepted that the appellant bribed the authorities in order to escape, it was illogical that the judge did not accept that the authorities would come to look for him. It was obvious that they would look for him. He asserted that the judge omitted to look at giving the appellant the benefit of the doubt. He asserted that the family was targeted but they did not want to approach the authorities to get information as the family was traumatised.
12. **UK Diaspora hotspot.** Mr Kumudusen also asserted that the judge did not consider that the appellant would be sent back from the UK, which is considered to be a diaspora hotspot, and the judge should therefore have assessed that there was a reasonable chance that the appellant would be at risk being returned from the UK.

The Respondent’s Submissions

13. The respondent served a Rule 24 (of the Tribunal Procedure (Upper Tribunal) Rules 2008) response. The respondent asserts that the First-tier Tribunal Judge fully considered the appellant’s claimed risk on return to Sri Lanka whilst bearing in mind the appellant’s credibility and lack of a timely asylum claim. It is asserted that the decision of the First-tier Tribunal was fully open to it and the finding that the appellant would not be at risk of return to Sri Lanka was supported by a full and reasoned assessment of the country guidance in the case of **GJ**.

14. Mr Avery submitted that there was no error of law. The judge was alive to the issues and the problems. He referred to paragraph 45 of the decision onwards and submitted that the judge undertook a comprehensive review of the risk taking into account the case law and the likely factors that might pose a risk on return. He submitted that the judge's findings were perfectly sustainable and were ones that were open to the judge to make. He referred to paragraph 55 and submitted that the lack of documents were relevant. Tribunals are aware that appellants can and do obtain copies of arrest warrants as they often see arrest warrants in support of applications for asylum. He submitted that paragraph 5 of the grounds are an attack on the judge's findings but no error of law is identified. He submitted that the appellant's case was that the authorities were interested in him and were constantly harassing his family, therefore it would be surprising that the appellant's wife was not included in that category as the closest person to the appellant. Mr Avery submitted that there is sophisticated intelligence, which is a good reason why, if the authorities had any interest in the appellant, they would be interested in stopping his wife. He submitted that it was difficult to see how the appellant could argue that the authorities were harassing his family and at the same time maintain that they would have no interest in his wife. If they were interested in his family the first place they would start asking questions would be with his wife. He submitted that the judge was entitled to take into account that nothing had happened to the family and that the finding was open to the judge that the appellant was not telling the truth. With regard to the delay Mr Avery submitted that the judge was entitled to make the findings that if the family were facing constant visits, then notwithstanding his findings on the appellant's credibility with regard to the detention in 2012 delaying to claim asylum in circumstances where there were constant visits to his family damaged the credibility of that assertion. He asserted that the weight to be attached to the father's evidence was a matter for the judge. He referred to paragraph 11 of the grounds and submitted that the judge found that the Sri Lankan authorities' sophisticated intelligence would be able to demonstrate that the appellant was not involved in resurgence activities. With regard to paragraph 12 of the grounds he submitted that it is not relevant that the appellant used bribery to obtain his release because one cannot tell whether a legitimate reason would have been put down on his record for his release or not. Mr Avery did not accept the interpretation of **GJ** given by the appellant's representative. He asserted that the Tribunal in **GJ** recorded the evidence regarding bribery and said that in some respects they gave some weight to the evidence, however **GJ** did not make findings that they accepted what the witness said about bribery.

Discussion

15. **Lack of documentation and interest in the appellant.** The judge took into consideration the lack of any documentation but this was only one factor that she took into consideration when arriving at her findings. At paragraphs 55 and 56 the judge set out:

- “55. Given the lack of any documentation confirming that the appellant is the subject of either an arrest warrant or that he has been issued with court summonses, together with the appellant’s failure to claim asylum within a reasonable period of his return to the United Kingdom and the absence of any apparent consequences to his family over the two and a half years since his release from detention, I do not accept the evidence that the authorities have shown a continued interest in the appellant and reject the evidence of the appellant’s father to that effect.
56. The appellant did not fight for the LTTE, has no family connections with the LTTE, none of the alleged threats against his family by the authorities have been carried out, he has had no involvement with the LTTE in the diaspora and the activities about which he was questioned occurred in 2006 and were allegations about a low level of involvement with the LTTE. All these factors contribute to my conclusion that the appellant would not be regarded by the Sri Lankan government as any risk to the single Sri Lankan state. Although I have accepted (albeit not without reservation) that the appellant was subjected to persecution in 2012, his complete lack of involvement in LTTE activities in the diaspora since 2012 and the lack of intervening interest by the Sri Lankan authorities in him or his wife and family suggest that there are good reasons to consider that a repeat of his detention is not a serious possibility”.
16. The judge was entitled to take into account as one factor that there was no documentary evidence. As submitted by the respondent, Tribunals are regularly presented with copies of arrest warrants and summonses. Whilst there is no requirement for corroborative evidence, as a factor amongst other several others it was permissible for the judge to take the lack of documentary evidence into account. As set out in the paragraphs above there were a number of factors that led to the judge’s finding that the appellant was not of any ongoing interest to the authorities in Sri Lanka.
17. It is asserted that the appellant has explained that the authorities have continued to visit his home making enquiries about him. As set out above the judge, at paragraphs 55 and 56, considered a number of factors in arriving at her decision that she did not accept the assertion that the authorities have shown a continued interest in the appellant and led her to reject the evidence of the appellant’s father to that effect. The judge had the benefit of hearing the evidence of the appellant and assessing his credibility in light of that evidence and all the other evidence and documents available. It is asserted that the judge failed to consider the appellant’s claim with anxious scrutiny. It is clear from reading the decision as a whole that the judge has on occasions given the benefit of the doubt to the appellant. The judge has not failed to consider the claim with the level of anxious scrutiny that should be afforded to such claims. The findings of the judge were ones that were reasonably open to her.
18. **The appellant’s wife’s departure.** It is asserted that the judge erred by taking into account the fact that the appellant’s wife was able to leave Sri Lanka on her own passport without any problems. As set out above there

were a considerable number of factors that the judge took into account when reaching her conclusion that the appellant was not of continuing interest to the Sri Lankan authorities. The appellant's case was that his family had been visited every two or three months by officers of the CID. As submitted by the respondent it would be surprising, given the sophisticated level of intelligence available to the authorities, that they would not be aware that he was married particularly as he married some sixteen months before he was detained by the authorities. It was a factor that the judge was entitled to take into consideration when determining whether it was reasonably likely that the authorities had a continued interest in the appellant in Sri Lanka.

19. **The delay in claiming asylum.** It is asserted that the judge erred by assessing the appellant's future persecution based on the appellant's delay in claiming asylum. It is asserted that the judge failed to consider the explanation given by the appellant. Even though the judge mentioned the explanation, she disregarded that explanation when making findings. It is clear from paragraph 52 that the judge considered the delay in claiming asylum did not affect the credibility of the appellant's claim in relation to his detention in 2012 and to that extent has not been considered by the judge to have undermined every aspect of his credibility. Where the judge found that the delay did undermine the appellant's credibility was with regard to his claim that his family was receiving attention from the authorities consistently from October 2012. The judge considered:

"... If the appellant fled Sri Lanka having been detained and tortured and believed that he would be arrested or killed on return to Sri Lanka as he had been recorded as an escapee, it is reasonable to expect that he would have made a claim for asylum in the United Kingdom without delay. Even if not immediately on his return, certainly when informed by his father of the non-stop visits from the authorities. I, therefore, do regard the appellant's substantially delayed claim for asylum as damaging to the credibility of his fear of future persecution on return to Sri Lanka ... The appellant delayed his claim for asylum for nearly eighteen months in circumstances where, on his father's evidence, his family was receiving attention from the authorities in relation to the appellant consistently from October 2012".

20. The judge was entitled to take into consideration the delay in claiming asylum when considering the credibility of his fear of future persecution in the circumstances that were asserted by the appellant, namely that his family was receiving attention from the authorities in relation to the appellant in Sri Lanka.
21. **Making findings based on her own assumptions.** It is asserted that it is inherently dangerous to place too much weight on plausibility when assessing credibility because a judge's judgement as to what is plausible is bound to be influenced by his or her own values. Attention is drawn to paragraph 48 and 51 of the decision. The judge set out, at paragraph 47, paragraph 324 from **GJ**. The comments of the judge in paragraphs 48 and 51 must be seen, therefore, through the lens of what the judge was

considering, which is that the Sri Lankan authorities will have sophisticated intelligence concerning who is contacting the diaspora or seeking to revive the quest for a Tamil homeland. These paragraphs consider that the change in focus of the Sri Lankan authorities is to those who are at risk of destabilising the Sri Lankan state. The appellant has had no involvement in any LTTE activities and neither has his family and he has not attended demonstrations in the diaspora. With regard to the submission that it was possible that at that time the authorities may have been trying to get him and to kill him without involvement of the court this is entirely speculative and does not appear to be an argument advanced before the First-tier Tribunal. I do not consider that the judge was making findings based on her own assumptions. She was considering what was likely based on the assessment of evidence in the country guidance case law (**GJ**).

22. **UK Diaspora hotspot.** The appellant has not claimed to have had any involvement at all in the diaspora. Merely because the appellant is being returned from London is not a sufficient risk factor in itself without more.
23. **Supply of resources.** It is asserted that the judge erred by considering that the appellant was in a similar position to the second appellant in **GJ** whereas the appellant's position is similar to the first appellant in **GJ** as a result of being concerned with financing and supplying resources. In **GJ** The factors that the Upper Tribunal considered put the first appellant at risk were:

"396. Given the **close connections the appellant's family had with Prabhakaran**, and his irregular exit from Sri Lanka, we are satisfied that he is a person with what the UNHCR Guidelines describe as "**more elaborate links with the LTTE**" and that there remains a real risk that he would be of interest on return. In order to obtain a TTD he will be required to complete a form, provide full details of his previous addresses and family members in Sri Lanka, and attend an interview. When he arrives in Sri Lanka the authorities will know everything they need to know about him.

397. The authorities within Sri Lanka have knowledge of the appellant's **previous role within the LTTE**, and in particular his **significant involvement in the LTTE's finance wing and its fuel supply**. This, **coupled with his sister's close connections to the former leader of the LTTE, his pro-Tamil separatism activities in the United Kingdom, and the nature of the enquiry made by the Sri Lankan authorities with the appellant's family since his departure from his homeland**, leads us to conclude that it is reasonably likely that the Sri Lankan authorities perceive the appellant as having a significant role in relation to post-conflict Tamil separatism within the diaspora." [Emphasis added]

24. The facts of the instant case are significantly different. There was no family connection with the LTTE at all let alone a connection with the former leader, there was no on-going interest in the appellant (as found by the judge). The appellant has not been involved in pro-Tamil separatist activities. The suspicion by the authorities that the appellant had supplied boats (his evidence is that he did not supply any boats to the LTTE) is the

most significant factor of the appellant's claim. The supply of fuel was only one of the factors in the first appellant's case in **GJ**.

25. The First-tier Tribunal judge considered that she could draw some support from the conclusions reached by the Upper tribunal in relation to the second appellant in **GJ**. The Upper Tribunal considered:

429. We have set out our reasons for considering that the GOSL's approach has modified since the appellant's last detention. The burden is upon the appellant to satisfy us, to the lower standard of a real risk, or a reasonable degree of likelihood, that if returned he would be at risk of persecution or serious harm from the Sri Lankan authorities. The process of obtaining a TTD will mean that the authorities learn all they need to know about his background before issuing a travel document.

430. Given the sophisticated intelligence available to the Sri Lankan authorities, within and without Sri Lanka, we consider that they will know what separatist activities he undertook in Sri Lanka and what his activities have been in the United Kingdom. We must ask ourselves, therefore, whether having regard to his known low-level activities during the conflict (bunker digging and transporting the wounded), there is a real risk that the second appellant will be perceived to be a diaspora activist with a significant role in diaspora activities designed to destabilise the unitary Sri Lankan state and revive the internal armed conflict.

26. The appellant in this case was not involved in any diaspora activities and his family has no involvement in the LTTE. The suspicion of the Sri Lankan authorities was that the appellant had assisted the LTTE by supplying boats through his friend. As set out by the Upper Tribunal the question is *"is there is a real risk that the second appellant will be perceived to be a diaspora activist with a significant role in diaspora activities designed to destabilise the unitary Sri Lankan state and revive the internal armed conflict"*. The findings of the judge as to whether the appellant's previous detention would cause adverse interest in him if he were returned now was open to her based on the evidence and the current focus of interest of the Sri Lankan authorities.

27. **Release as a result of bribery.** The grounds assert that the judge made no findings as to whether or not she rejects or accepts that the appellant's release was by bribery. It is asserted that in **GJ** supports the view that release by bribery was likely to be regarded as an escape. In **GJ** the assessment of Mr Punethanayagam's evidence was:

"275. Mr Anton Punethanayagam's evidence is that of a practitioner who has dealt with 3000 cases of detainees, in Colombo and Vavuniya. His evidence on the process of bribery was particularly useful. We did not have the opportunity of hearing him give oral evidence, and some of his evidence goes beyond what he can be taken to know himself but where his evidence concerns the criminal processes in Sri Lanka, we consider that it is useful and reliable. We take particular account of his view that the seriousness of any charges against an individual are not determinative of whether a bribe

can be paid, and that it is possible to leave through the airport even when a person is being actively sought. “

28. The judge, at paragraph 49 did consider this issue. Whilst there is no explicit finding as to whether or not she accepted that the appellant's release was by bribery the judge accepted that *“The fact that the appellant left on his own passport in 2012 does not necessarily mean that he is not on a “stop” list if a bribe was paid (and the Country information suggests that this is a plausible claim), but there is no pattern of interest in him or his family apart from his 6 day detention in 2012.”* It is clear from this passage that the judge implicitly accepted that payment of a bribe secured his release and that obtaining release in these circumstances can result in the authorities actively seeking the person. Given the judge's findings that there was no continued interest even if there was an error in this regard it could not be material.
29. The decision of the First-tier Tribunal is well reasoned, detailed and all relevant matters were considered. The findings were all ones that were open to the judge to arrive at on the basis of the evidence, the relevant case law and objective evidence.
30. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

Notice of Decision

31. The appellant has not discharged the burden of satisfying me that there were any material errors of law in the First-tier Tribunal's decision without which it is not susceptible of being set aside. The appeal is dismissed. The Secretary of State's decision stands.

Signed P M Ramshaw

Date 20 March 2016

Deputy Upper Tribunal Judge Ramshaw