



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

Appeal Number: AA/02703/2015

THE IMMIGRATION ACTS

Heard at Field House

On 20th May 2016

**Decision & Reasons
Promulgated
On 1st June 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**P P
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Lingjorthy (Counsel)

For the Respondent: Mr E Tufan (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Majid, promulgated on 7th March 2016, following a hearing at Taylor House on 2nd March 2016. In the determination, the judge allowed the appeal of the Appellant, thereupon the Respondent Secretary of State applied for,

and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Sri Lanka, and he was born on [] 1989. He appealed against the decision of the Respondent dated 11th February 2015, refusing him leave to remain in the UK as an asylum seeker.

The Appellant's Claim

3. The crux of the Appellant's claim is that whilst in the UK, where he has undertaken a Bachelors degree at Greenwich University, he had been to France to raise money for a Tamil group that was associated with the LTTE. He had attended one of their meetings in London. He had helped raise money in the UK for use in the Tamil cause under various charitable banners. He had also in France met the ex-commander of the LTTE, Colonel Parithi, who was in charge of the French LTTE movement in the diaspora (see paragraph 14 of the determination). This now puts him at risk of persecution at the lower standard.

The Judge's Findings

4. The judge set out in great detail the contents of the Appellant's statement (see paragraph 11 of the determination), of some ten paragraphs before concluding that "the Appellant is gravely suffering from the effects of the Sri Lankan authorities' persecution". The judge was clear that the Appellant "has credibly told he fears the threat of death on return and has 'suicidal' thoughts" (paragraph 12). The judge referred to evidence which he regarded as being in the public domain of the risk that would attach to a person such as the Appellant and ended his determination with the words that there was "lethal risk which can visit this Appellant" (paragraph 17).
5. Curiously there was also reference to the claim of a Ugandan asylum seeker (at paragraph 16), although upon closer analysis it is clear that the judge is attempting to demonstrate the application of "anxious scrutiny" principles to asylum cases here. There was in addition, also, a reference to the "legal requirements stipulated by immigration law" (at paragraph 18).
6. The appeal was allowed.

Grounds of Application

7. The grounds of application state that the judge did not have regard to the country guidance case law of **GJ (post-civil war: returnees) Sri Lanka [2013] UKUT 00319** because that requires a decision maker to have regard to the risk factors which would apply, given that the civil war has now ended and only those that pose a threat to the unitary nature of the

Sri Lankan state are at risk from the Sri Lankan authorities. Moreover, the judge had given inadequate reasons for his findings and made some procedural errors.

8. Permission to appeal was granted on 4th April 2016.

Submissions

9. At the hearing before me on 20th May 2016, Mr Tufan, appearing as Senior Home Office Presenting Officer, on behalf of the Respondent Secretary of State, stated that the determination could not stand for the following reasons. First, looking at the determination in the round, there were irrelevant matters that the judge had made references to. He had made references to the Immigration Rules (at paragraph 18) in a way that was not relevant. He had also referred to a Kenyan asylum seeker's claim (at paragraph 16) which had added confusion to the determination (although as I have indicated already this was in the context of the judge attempting to show that the principles of "anxious scrutiny" must apply in all asylum cases). Second, the judge had most importantly not referred to the country guidance case of **GJ (Sri Lanka)**. Third, he had simply set out a large section of the Appellant's witness statement, as evidence, and relied upon it, and then allowed the appeal simply on that basis. Fourth, there was a reference to the case of **Ex parte Gondolia [1991] Imm AR 519**, which it was again unclear to see the relevance of in the context of these proceedings, and that too was an irrelevant matter. Finally, in referring to the "relevant law" the judge had drawn attention to "the rule of law" (see paragraph 6(e)), and this was again raised in a manner that was quite confusing.
10. For his part, Mr Lingjorthy handed up his skeleton argument which makes it quite clear that although the case of **GJ (Sri Lanka)** is not referred to "the fact-finding brings the Appellant under the risk factors contained in **GJ and Others** and therefore he is at risk on return" (see paragraph 3). First, he submitted that the Tribunal should approach the grounds of application by the Secretary of State with some caution. Second, Judge Lever granted permission because there was no reference to the country guidance case of **GJ (Sri Lanka)**. That did not mean that **GJ** had not been followed. Third, Mr Lingjorthy, who had appeared before Judge Majid below, had presented a skeleton argument at the time before the Tribunal and that had made extensive references to the case of **GJ (Sri Lanka)**, such that the case must have been known to Judge Majid, and reliance placed upon it, and all that the judge thereafter did was to make findings of fact. Finally, given that the judge had set out at paragraph 11 of the determination all the relevant evidence that he was accepting, it was not difficult to see how the principles of **GJ (Sri Lanka)** fell to be applied in the Appellant's favour. This is because paragraph 7(d) of **GJ** makes it quite clear that, "a person whose name appears on a computerised 'stop' list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant" is at risk of persecution.

11. In reply, Mr Tufan submitted that the determination was written in a way, where it was not clear what had been accepted in the evidence and what had not been accepted, and one was just left to surmise that the Appellant had satisfied one of the risk factors in **GJ (Sri Lanka)**. If anything, the judge had deviated from the requirements of **GJ (Sri Lanka)** because he was referring to there being a “truce between them and the LTTE” (at paragraph 18) whereas, in fact, there was no truce as such, and what had happened was that the LTTE had been eliminated as a political force in Sri Lanka by the dominant governmental forces. All that one was left with was the Appellant’s sur place activities and these did not necessarily mean that he would succeed. One still had to demonstrate that one posed a risk to the unitary nature of the state. That was not clear from the determination.

Error of Law

12. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. First, it is not clear at all as to what the judge does accept and what he does not from the evidence put forward by the Appellant. What we have is a recital of the specific contents of the relevant paragraphs in the Appellant’s witness statement. These are set out at length at paragraph 11 of the determination and they run into no less than ten individual paragraphs. At the end of this recital, the judge states (at paragraph 12) only that “the Appellant is gravely suffering from the effects of the Sri Lankan authorities’ persecution”. It is not clear from this what facts the judge has found in the Appellant’s favour.
13. Second, the judge does not apply the substance of the direction in **GJ (Sri Lanka)**. It is clear that he makes no reference to this country guidance case. I accept, however, that this in itself is not fatal to the determination. What is required is that the substance of the country guidance direction should be taken into account. This does not appear to be the case here. Mr Lingjorthy submits that paragraph 7(d) of **GJ (Sri Lanka)** falls to be applied on the facts of this case. However, the judge does not make a finding that the Appellant is the subject of “an extant court order or arrest warrant” which is what is required in paragraph 7(d).
14. Third, these anomalies are magnified by the fact that the true picture in Sri Lanka currently is represented by reference to the statement that there is a “truce between them and the LTTE” (paragraph 18), which is a statement made in the context that the Sri Lankan authorities cannot, this being the case, be trusted to be “sincere” about such a truce. In the same way, there are references to matters that are not relevant, such as the reference to the “legal requirements stipulated by immigration law” (paragraph 18) and to the importance of the rule of law.

Re-making the Decision

15. I have re-made the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today. I am allowing this appeal to the extent that it is remitted back to the First-tier Tribunal at Taylor House to be determined by a judge other than Judge Majid under Practice Statement 7.2(b) because the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal.
16. I direct that although the Appellant's claim is that he has been involved in sur place activities in France and in the UK, that these matters must not only be factually determined by the First-tier Tribunal, but also that the existence of such sur place activities must be considered in the context of **GJ (Sri Lanka)** whereby it is made clear (at paragraphs 335 to 336) that only those activists who are "working for Tamil separatism and to destabilise the unitary Sri Lankan state" are at risk of ill-treatment and persecution.

Notice of Decision

17. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I re-make the decision as follows. This appeal is remitted back to the First-tier Tribunal at Taylor House to be determined by a judge other than Judge Majid on a de novo basis.

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

Deputy Upper Tribunal Judge Juss

31st May 2016