Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA030892015

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 24th May 2016	**On 26th May 2016**

Before

UPPER TRIBUNAL JUDGE COKER

Between

CL
(Anonymity order made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Tobin, counsel, instructed by Theva, solicitors
For the Respondent: Ms C Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant in this determination identified as CL. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. The appellant was granted permission to appeal on the grounds that it was arguable that although the First-tier Tribunal judge considered whether the appellant would be at risk of return to Sri Lanka, more was needed in the

assessment of the potential risk on return in terms of an appraisal of the background material submitted and relied upon by the appellant.

2. The First-tier Tribunal made the following findings:

- The appellant was born on [ ] 1981 and is a citizen of Sri Lanka. He is Tamil and a Christian. He arrived in the UK on a student visa 23rd September 2009 travelling on his own passport. His student visa expired on 1st March 2011. He did not leave the UK. He claimed asylum on 1st September 2014.
- He joined the LTTE in 2002 and underwent initial training for 3 months. He worked in the finance section until December 2002. Thereafter he studied until 2009 during which time his activities for the LTTE were minimal although on three occasions between 2003 and 2004 he accompanied former LTTE members to Colombo for medical treatment – during the ceasefire. He also assisted the LTTE from time to time collecting and delivering a supply of medicine between June 2006 and August 2007.
- The appellant did not enrol on his accountancy course at University because the LTTE told him to but because he decided to continue his studies after completing his HND.
- The appellant had no LTTE contact after August 2007.
- In February 2009 he moved to Colombo to continue his studies.
- On 13th July 2009 he was arrested, detained for four days, beaten with wire and kicked in the groin. A distant relative procured his release. He was released with no reporting restrictions and without payment of a bribe.
- There is no arrest warrant.
- He has attended some demonstrations in London.
- When he arrived in the UK in October 2009 he was of absolutely no interest to the Sri Lanka authorities.
- The authorities did not visit his mother and threaten her in August 2010.
- The authorities have not been to his home looking for him in August 2010.
- His brother in law was not arrested and is not required to sign on.
- He has not played any significant role in the diaspora post conflict.
- The authorities would not perceive him to be a threat to the unity of Sri Lanka.

3. In the grounds seeking permission to appeal it is accepted on behalf of the appellant that the First-tier Tribunal judge correctly considered the factual matrix in the context of *GJ (post civil war: returnees) Sri Lanka) CG* [2013] UKUT 319 (IAC) but contends the judge failed to have adequate or any regard to the substantial background material submitted covering the period February to December 2014, January to June 2015 and a report by the Bar Human Rights Committee March 2014 titled “An unfinished war: Torture and Sexual Violence in Sri Lanka, 2009 – 2014”. The appellant submits that he was detained and ill-treated for four days in July 2009 on suspicion of being a member of the LTTE which was *after* the conclusion of the “final war”. The human rights situation has, it is submitted, declined; there has been an increase in “paranoia” of the Sri Lankan authorities about the resurgence of the LTTE and because the appellant has been out of Sri Lanka for a number of years in a “diaspora hotspot” the First-tier Tribunal judge was required to assess current risk in that context.

4. Before me Ms Tobin submitted that it was "Robinson obvious" and implicit in the grounds seeking permission that the appellant was disputing the findings that his mother had not been visited and threatened in August 2010, that his home had not been visited looking for him in 2010 and that his brother in law had not been arrested and required to sign on for the last five years. The grounds seeking permission state (where relevant):

> 3. The judge found the remainder of the appellant's claim incredible
> …..
> 5. It is submitted that the judge erred in law in her assessment of risk on return.
> 6. In assessing the risk on return, the judge had twin legal duties. A failure to adhere to either of these duties would render her decision erroneous in law.
> 7. The first duty was to apply the extant country guidance case. As can be seen from paras 42-45 of the determination, the judge did so.
> 8. The second duty….. that asylum appeals should be determined by reference to the position at the time of the appellate decision.
> 9. It is submitted that the judge failed in the second duty. The decision in *GJ* was based on country evidence that the Upper Tribunal heard in February 2013, however, placed before the judge was substantial evidence about the country situation in the 2 ½ years that had passed since, including evidence about the situation in Sri Lanka at the date of hearing.
> 10. It is submitted that the judge erred in law in failing to have any regard whatsoever to the up-to-date evidence about the situation in Sri Lanka……
> 11. In terms of reconciling the two duties, the judge was not required to depart from the risk categories identified in *GJ*. Rather, it was incumbent upon her to consider whether the appellant fell within one of the defined risk categories in *GJ* views through the prism of the most recent objective evidence.
> 12. The most recent objective evidence before the judge showed that:
> (i) the human rights situation in Sri Lanka had continued to deteriorate throughout the period following the "final war" in 2009;
> (ii) in 2014 the Sri Lankan government was becoming increasingly vocal both domestically and on the international stage (in the face of mounting criticism about its conduct of the final war) about the risk of the resurgence of the LTTE;
> (iii) in 2014 the Sri Lankan government had its first armed encounter with the LTTE since the end of the war in May 2009;
> (iv) in 2015 there had been an increasing number of arrests at the airport of Tamils returning from abroad on suspicion of activity in support of the revival of the LTTE.
> 13. That evidence, which post dated the evidence in GJ by some 2 ½ years, was plainly relevant …..
> 14. Against that backdrop, it was incumbent upon the judge to ask herself whether, on the basis of the positive factual findings that she made, the objective situation at the date of the hearing was such that someone with the appellant's profile now fell within one of the risk categories in *GJ*, in circumstances where he may not have done so at the time when *GJ* was decided.
> 15. The judge's determination fails to demonstrate that she considered that updated objective evidence and therefore her assessment of risk on return is legally flawed….

5. In further grounds seeking permission relied upon, the appellant asserted:

> ….. given the passage of time since the country guidance case, the objective evidence which showed a decline in the human rights situation and increasing paranoia on the part of the Sri Lankan authorities about a resurgence of the LTTE, plus the fact that the appellant had been out of Sri Lanka for a number of years in a ' Diaspora hotspot' like the UK, it was incumbent upon FTTJ Herlihy to assess the

> ***current*** risk, namely whether the appellant was ***now*** a person " who is 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"….

6. The skeleton argument submitted on behalf of the appellant states that it was accepted by the First-tier Tribunal judge that the appellant

> "had managed to hide [that he was a member of the LTTE, had undergone training with the LTTE, and helped to transport LTTE members to Colombo] those facts from the GOSL in 2009 and had been released as someone of no interest at that point. It is relevant to note that the GOSL authorities were not, at that point in time, aware that the A had undertaken those roles or tasks for the LTTE."

   At no point in the grounds seeking permission or in the skeleton is it asserted that the findings regarding the appellant's brother in law's claimed arrest, detention, questioning and signing on, or regarding the visits to his mother or his home looking for him, were disputed. The grounds accept that the judge correctly considered the factual matrix in terms of *GJ*. There is no assertion that the factual matrix relied upon by the judge in making that assessment was incorrect or somehow in error in the light of the background material that was before her.

7. The jurisdiction of the Tribunal is sufficiently wide to enable it to consider, in an international protection context, whether or not applicable statutes, rules, policies and Convention standards have been considered – whether or not they have been expressly referred to. Ms Tobin relied upon her assertion that the dispute in relation to those findings was 'obvious'. The *Robinson*[1] doctrine obliges the Tribunal to consider a point that was not raised before the Tribunal once it has occurred to the Tribunal, even if the point is not 'obvious' in the sense of having a strong prospect of success. But in this case it is simply not arguable that it is 'obvious' that findings of the judge are disputed. The grounds refer to the core positive findings made by the First-tier Tribunal judge and base the error of law assertions on those findings in the context of post *GJ* background material. There is no assertion that some of the findings were in error when considered in the context of post *GJ* material – a different point to that relied upon in the grounds and one which has not been raised; nor is it obvious.

8. Ms Tobin referred to a December 2012 UNHCR report. This report pre-dates the Country Guidance case and was considered by the Upper Tribunal in reaching its decision. The skeleton argument refers to a COIS report published since the First-tier Tribunal decision which includes reference to the Authorities reportedly monitoring communications and activities of individuals known to be critical of the government, refers to an Amnesty Report published in February 2016 which refers to many human rights challenges remain and to a March 2016 TamilNet report that intelligence operatives are conducting fresh registrations of people and that regardless of their release after prolonged periods of detention and rehabilitation they are again being subjected to questioning. These documents were not before the First-tier Tribunal when the judge reached her decision and the judge can hardly be criticised for failing to take account of material that was

[1] Robinson v SSHD [2007] Imm AR 568

not before her. In any event, even if that material had been published prior to the hearing/decision, the appellant is not, on the factual findings of the judge, a person at serious risk of being persecuted. Although he was detained it was not a lengthy period of detention, albeit it was violent and he was badly mistreated. He was not subjected to "rehabilitation".

9. In so far as the material relied upon that post dates *GJ* Ms Tobin relied upon the UNHCR report (which in fact pre dates *GJ*) which refers to cadres employed in administrative functions being at continued potential risk and a number of specific reports that refer to the LTTE continuing to use its links in USA, Europe and Asia to procure arms. Ms Tobin referred to the appellant returning from a diaspora hotspot and that the background material together with this results in the appellant being at serious risk of being persecuted. The First-tier Tribunal judge did not in terms refer to any particular documents in the 101 page background bundle submitted of post *GJ* reports – the last 46 pages of which in fact pre-date *GJ* or the additional supplementary bundle of documents titled "Objective Evidence – 2015. Of those documents Ms Tobin drew my attention to three specific documents in the latter bundle. None of the individuals referred to in those documents had the same background profile as the appellant.

10. I was only provided with the summary of the report from the Bar Human Rights Committee. Although my attention was not specifically drawn to other documents that post dated *GJ* I have nevertheless considered those documents. Many repeat the same information and are generalised statements that do indicate a continued level of activity by the Sri Lankan authorities in pursuing the arrest of those whom it considers to be involved in the possible resurgence of the LTTE. One notable example is of the leader of the women's wing of the LTTE Sea Tigers from 1997 to 2000 who fled to France in 2005. She was arrested when she returned to France in February 2015 but from one report appears to have been released on bail in mid March 2015 with signing on conditions. That report refers to her as the main financial controller of the LTTE's diaspora global finance networks. There are references to Tamils returning from the Middle East being arrested but scant information about what happened to them, how long they were questioned/detained for or what their history was.

11. This appellant's sister (who has been in the UK since 2001) and her family have returned on regular visits to Sri Lanka with no claimed problems; his family who remain living there have not, on the judge's findings, had any problems; although he would be returning from London there is nothing in the post *GJ* background material that would indicate this appellant with his factual matrix would be at real risk of being persecuted. Although the judge did not specifically refer to the more recent material, she has confirmed ([27]) that she has considered the background material. Although it would have been more complete for the judge to specifically refer to documents to which her attention was drawn, consideration of those documents would not have resulted in a different outcome.

12. There is no material error of law in the decision of the First-tier Tribunal.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision

The decision of the First-tier Tribunal stands.

Date 25th May 2016

Upper Tribunal Judge Coker