



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/06526/2015

THE IMMIGRATION ACTS

Heard at Field House  
On 17 February 2016

Decision Promulgated  
On 25 February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

S P  
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Miss A Seehra (counsel) instructed by Nag Law, solicitors  
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, to preserve the anonymity direction deemed necessary by the First-tier Tribunal.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Shiner promulgated on 20 November 2015, which dismissed the Appellant's appeal.

## Background

3. The Appellant was born on 14 October 1976 and is a national of Sri Lanka.
4. On 31 March 2015 the Secretary of State refused the Appellant's application for asylum, but granted limited leave to remain in the UK until 30 September 2017.

## The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Shiner ("the Judge") dismissed the appeal against the Respondent's decision.
6. Grounds of appeal were lodged and, on 15 December 2015, Judge Cruthers gave permission to appeal stating *inter alia*

"I consider it is arguable that if those elements of the account accepted by the Judge (see paragraph 2 of the grounds) are taken with the guidance in GJ and Others(post civil war: returnees)Sri Lanka CG [2013] UKUT 00319 (IAC) then, arguably, the Judge should have found that the appellant would face a real risk of persecutory ill treatment if returned to Sri Lanka."

## The Hearing

7. (a) Ms Seehra, for the appellant, adopted the terms of the grounds of appeal. She told me that at paragraph 2 of the grounds of appeal she had set out the positive findings of fact that were made by the Judge. She told me that against the background of those positive findings the Judge had failed to take account of the cumulative effect of the appellant's profile in the eyes of the Sri Lankan authorities. She told me that although the Judge takes guidance from the case of GJ, he does so by considering each singular aspect of the appellant's profile rather than considering the cumulative effect of the various strands of the appellant's profile as a member of an LTTE martyr family, and active LTTE supporter in the diaspora and a man associated with LTTE charities who has made a televised speech, which had been broadcast in Sri Lanka, seeking a separate Tamil state.

(b) Ms Seehra argued that the Judge had failed to provide adequate reasons for his findings of fact, in particular in relation to the profile the appellant would have in the eyes of the Sri Lankan authorities. She argued that the Judge had failed to make findings of facts on crucial evidence. She explained that the appellant's sister had written letters, which were before the Judge, on which the Judge made no findings in fact - and that the decision is silent on the existence of those letters. She argued that the Judge had misinterpreted the evidence about the appellant's returns to Sri Lanka in 2005 and 2010, and failed to take account of his exit from Sri Lanka in 2011 by boat. She told me that she, herself, had made a number of submissions to the Judge which are not recorded in the decision.

(c) Ms Seehra's overarching submission is that if the Judge had considered the appellant's overall profile and then correctly followed the guidance from GJ, he would have allowed the appeal. Ms Seehra placed reliance on extracts from the respondent's COIS reports of November 2010 and March 2012. She urged me to set the decision aside

and to set a further hearing in the Upper Tribunal because, she told me, there are findings in fact which are outstanding and updated background evidence will be necessary.

8. Mr Bramble, for the respondent, told me that the decision does not contain errors of law, material or otherwise. He adopted the terms of the respondent's rule 24 response dated 15 January 2016. He referred to [62] to [90] of the decision and told me that the Judge had taken a structured approach to the evidence, considering each aspect of the appellant's profile and carefully weighing up the impact of that profile in the light of the guidance given in the case of GJ. He told me that the Judge had carefully made findings of fact and then followed country guidance, before coming to the conclusion that the appellant would not be at risk on return to Sri Lanka. He told me that the conclusion reached by the Judge was well within the range of conclusions reasonably open to the Judge to reach. He urged me to dismiss the appeal and allow the decision to stand.

### Analysis

9. The Judge commences his findings of fact at [62]. He employs a methodical approach, separating each significant aspect of the appellant's claim & then considering each separate aspect under clearly identified headings. On the whole, the Judge accepts the appellant's account. It is only at [90] that the Judge rejects some aspects of the appellants claim. It is there that the Judge finds that the appellant has not previously been arrested, detained or tortured by the Sri Lankan authorities. It is there that he finds that the appellant does not have a profile which would cause the Sri Lankan authorities to have an interest in him.

10. At [59] the Judge correctly sets out the guidance contained within the case of GJ and identifies the risk factors. In GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) the Tribunal held that 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. (b) Journalists whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government. (c) Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes. Among those who may have witnessed war crimes during the conflict, particularly in the No-Fire Zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses. (d) 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. Individuals whose name appears on a "stop" list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.

11. The appellant claims that he falls within the first of those risk categories; he claims that he is viewed by the Sri Lankan authorities as a person with a significant role in post-conflict Tamil separatism within the diaspora. It was also argued before the First-tier that even if the appellant does not fall within a risk category set out in GJ, he still faces a real risk of persecution, relying on the ratio of MP.

12. In MP (Sri Lanka) and NT (Sri Lanka) v SSHD [2014] EWCA Civ 829, the Court of Appeal upheld GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) and found that there was no legal error in the Upper Tribunal's country guidance on Sri Lanka despite the fact that it had narrowed the risk categories from those in the Eligibility Guidelines of the United Nations High Commissioner for Refugees. It was stated however that the Upper Tribunal had not prescribed "*that diaspora activism is the only basis on which a returning Tamil might be regarded as posing*" a future threat and thus of being at risk on return. "*There may, though untypically, be other cases where the evidence shows particular grounds for concluding that the Government might regard the applicant as posing a current threat to the integrity of Sri Lanka as a single state even in the absence of evidence that he or she has been involved in diaspora activism*". At paragraph 16 the Court of Appeal acknowledged that no doubt it would be easier to infer that the test relating to current risk categories in GJ is satisfied where elaborate links are established than where they are not. At paragraph 43 it was said that the Upper Tribunal in GJ was entitled to attach significance to the fact that the appellant has not participated in Tamil separatist activity in the United Kingdom but that is not an absolute prerequisite for protection under the guidance.

13. Paragraph 2 the grounds of appeal correctly sets out the appellant's profile as the Judge found it to be. The appellant has a history of involvement with LTTE. His older brother was a major in the LTTE army who was killed in the conflict. The appellant was an LTTE member (although perhaps a less willing members than his brother) in both 1992 and 1998. The appellant's family are considered to be an LTTE martyr family, and because of that, the appellant has been photographed with LTTE leaders. The appellant is a supporter and fundraiser for the white pigeon charity, which the Sri Lankan authorities suspect of being a funding source for Tamil separatists. The appellant made a political speech at his wedding which was broadcast on both UK and Sri Lankan television.

14. The Judge considered each of those factors separately, and considered that each separate factor did not amount to anything more than a low profile LTTE supporter who would be of no interest to the Sri Lankan authorities. What the Judge did not do is consider the cumulative effect of each of those individual factors. One factor on its own may be something that the Sri Lankan authorities will ignore, but the cumulative effect of each separate factor may create a different profile, and it is that profile which the Judge did not consider. I have to determine whether or not that amounts to a material error of law. To answer that question, I consider what effect the appellants accepted cumulative profile has.

15. The appropriate guidance is to be found in the cases of GJ and MP. The appellant has been photographed with LTTE leaders. He is identified as a member of an LTTE martyr

family. His speech calling for a separate Tamil state has been broadcast on television in Sri Lanka. He is known to be a donor to the white pigeon charity.

16. The appellant's LTTE involvement, his association with LTTE leaders and his wedding speech are all of some age. It is accepted by the Judge that the appellant returned to & lived in Sri Lanka between 2010 and 2011. The appellant's activities for white pigeon ceased, on his own evidence, in 2006. The television documentary that featured the appellant was broadcast in Sri Lanka in 2006.

17. No realistic dispute is taken to the Judge's findings of fact. The Judge rejected the appellant's claim of arrest and torture in 2010/11. When each of the findings which favoured the appellant are taken cumulatively, the appellant's profile is that of a Tamil whose family were LTTE supporters, and whose siblings died fighting for LTTE. But the appellant's account of sur place activities is rejected. The Judge finds that each individual aspect of the appellant's profile amounts to no more than low-level LTTE support. The historic nature of the evidence of the appellant's LTTE profile counts against him, so that when an holistic view is taken of the cumulative strands of the appellant's accepted profile it can be seen that his public LTTE activities ended in 2006. The appellant returned to Sri Lanka in 2010.

18. The risk categories are clearly set out in GJ and have been confirmed in MP. The findings of fact made by the Judge, and relied on by the appellant at number of paragraph 2 of the grounds of appeal, taken cumulatively are insufficient to demonstrate that the appellant has a significant role in post-conflict separatism within the Diaspora. The appellant does not fall within the risk categories identified in GJ. The appellant does not fall within the exceptions noted in MP.

19. In so far as the Judge made an error in failing to consider the cumulative effect of the various strands of the appellant's profile, that is not a material error of law because the error makes no difference to the decision.

20. The remaining grounds of appeal, and the remaining submissions, whilst made with care and skill, amount to little more than an expression of dissatisfaction with the facts as the Judge found them to be. It is argued that the Judge failed to take account of documentary evidence produced from the appellant's sister, and that the Judge failed to give reasons for rejecting certain aspects of the appellants claim.

21. At paragraph 49 of MA (Somalia) [2010] UKSC 49, 24 it was said that "*Where a tribunal has referred to considering all the evidence, a reviewing body should be very slow to conclude that that tribunal overlooked some factor, simply because the factor is not explicitly referred to in the determination concerned*". McCombe LJ in VW (Sri Lanka) C5/2012/3037 said "*Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgment, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact*"

22. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

23. In reality, although skilfully presented, what is argued amounts to little more than a disagreement with the facts as the Judge found them to be. No error of law is identified in the second, third or fourth grounds of appeal.

24. I find that the Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed and based on cogent reasoning.

## CONCLUSION

**25. No errors of law have been established. The Judge's decision stands.**

## DECISION

**26. The appeal is dismissed. The decision of the First-tier Tribunal stands.**

Signed

Date 22 February 2016

Deputy Upper Tribunal Judge Doyle