



**The Upper Tribunal
(Immigration and Asylum Chamber)
AA/07861/2015**

Appeal number:

THE IMMIGRATION ACTS

Heard at Field House

On April 11, 2016

**Decision
Promulgated**

On April 14, 2016

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR M K
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Ms Brocklesby-Weller (Home Office Presenting Officer)

For the Respondent: Mr Butterworth, Counsel, instructed by Loshana & Co

Limited

DECISION AND REASONS

1. The respondent in these proceedings was the appellant before the First-tier Tribunal. From hereon I have referred to the parties as they were in the First-tier Tribunal so that for example reference to the respondent is a reference to the Secretary of State for the Home Department.
2. The Appellant is a citizen of Sri Lanka. The appellant entered the United Kingdom on November 3, 2011 and claimed asylum the following day. After a delay he attended a screening interview on February 19, 2015 was granted at which time he was served with Form IS151A as an illegal entrant.
3. On April 20, 2015 he was detained and his claim was entered into the Detained Fast Track system. He underwent a substantive interview on May 5, 2016 but the respondent refused his claim on May 8, 2015 under paragraph 336 HC 395 and took a decision to remove him by way of directions under section 10 of the Immigration and Asylum Act 1999.
4. The appellant appealed that decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on May 12, 2015.
5. The appeal came before Judge of the First-tier Tribunal Symes (hereinafter referred to as the Judge) on February 4, 2016 and in a decision promulgated on February 16, 2016 he allowed the appellant's appeal on asylum grounds.
6. The respondent lodged grounds of appeal on February 19, 2016 submitting the Judge had erred both in his approach to GJ and others (Post Civil War: Returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) and that he failed to make findings and/or give adequate reasons for his findings.
7. Permission to appeal was granted by Judge of the First-tier Tribunal Brunnen on March 2, 2016 on the basis the grounds were arguable.
8. The matter came before me on the above date and I heard submissions from both representatives. I reserved my decision.
9. The First-tier Tribunal made an anonymity direction. 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.

SUBMISSIONS

10. Ms Brocklesby-Weller submitted the Judge failed to consider Section 8(4) of the Asylum and Immigration (Treatment of Claimants etc)

Act 2004 (hereinafter called the 2004 Act) when considering the appellant's credibility. The Judge failed to have regard to the fact the appellant could have claimed asylum in Spain and in doing so his assessment of the appellant's credibility was flawed. The Judge further erred by failing to make clear findings on the appellant's account. He had claimed he had been persecuted in both 2009 and 2013 and whilst the Judge considered the 2009 incident he failed to address the circumstances of 2013 and this was pertinent to his claim because the war was over in 2009 and therefore the circumstances of 2013 needed to be addressed. She submitted the findings in paragraphs [24] to [26] did not address the issues in the refusal letter especially as the Judge found the appellant had not carried out any significant activities or had any involvement in the diaspora and would therefore would not be a threat to the Sri Lankan state. The Judge's finding in paragraph [29] was wrong in law and the decision should be set aside.

11. Mr Butterworth relied on his skeleton argument and submitted the respondent's ground were unmeritorious and the Judge had given reasons for his decision. He referred to the cases of VHR (unmeritorious grounds) Jamaica [2014] UKUT 00367 and Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) and submitted the Judge correctly applied GJ and others (Post Civil War: Returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) and made findings that were open to him. His finding in paragraph [29] complied with GJ because the Judge concluded the appellant's profile would bring him to the attention of the authorities and it was unnecessary to have carried out actions in the diaspora where the judge concluded that the evidence presented demonstrated he was of interest and therefore he would be at risk based on the guidance contained in GJ. Mr Butterworth further submitted that in this appeal the Judge was entitled to ignore the section 8 issue raised by the respondent based on the answers he gave in interview. The Judge clearly attached no weight to the fact he was in a container and he only entered Spain whilst on transit between countries and all times he was confined in a container. The Judge made findings on the issues raised by the respondent in her refusal letter and these findings were contained in paragraphs [24] to [30] of his decision. There was no material error and the respondent's appeal should be dismissed.
12. Having heard the representatives' submissions, I reserved my decision.

DISCUSSION AND FINDINGS

13. The appellant was from Sri Lanka and having arrived here he claimed asylum. The respondent refused his claim in a detailed refusal letter and in appealing that decision the appellant provided

medical and country evidence to support his claim. He argued that he fell into a risk category set out in the decision of GJ.

14. Although the Judge set out the relevant parts of GJ I feel in considering the respondent's application today it would assist if I set out the relevant parts of GJ. The Tribunal's conclusions included:

- (i) The focus of the Sri Lankan government's concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war.
- (ii) The government's present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the 'violation of territorial integrity' of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.
- (iii) If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection.
- (iv) Internal relocation is not an option within Sri Lanka for a person at real risk from the Sri Lankan authorities, since the government now controls the whole of Sri Lanka and Tamils are required to return to a named address after passing through the airport.
- (v) There are no detention facilities at the airport. Only those whose names appear on a "stop" list will be detained from the airport. Any risk for those in whom the Sri Lankan authorities are or become interested exists not at the airport, but after arrival in their home area, where their arrival will be verified by the CID or police within a few days.
- (vi) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, include:
 - 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. 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.

(vii) The Sri Lankan authorities’ approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the diaspora. The Sri Lankan authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had some level of involvement with the LTTE during the civil war. In post-conflict Sri Lanka, an individual’s past history will be relevant only to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan Government.

(viii) The authorities maintain a computerised intelligence-led “watch” list. A person whose name appears on a “watch” list is not reasonably likely to be detained at the airport but will be monitored by the security services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict, the individual in question is not, in general, reasonably likely to be detained by the security forces. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.”

15. The respondent’s grounds of appeal challenge firstly the Judge’s finding in paragraph [29] that the appellant falls within one of the risk categories identified above and secondly on the basis the Judge failed to make material findings and/or failed to give reasons for his findings.

16. At paragraph [7] of his decision the Judge set out the respondent’s objections and Ms Brocklesby-Weller has submitted that the Judge failed to make findings on some or all of them. Mr Butterworth has argued to the contrary.

17. The Judge noted in his record of evidence that the appellant had not exaggerated his involvement with the LTTE. He referred in paragraph [10] to his involvement as being “digging bunkers and cleaning” and later on he noted the appellant claimed to have worked in the suppliers group. The appellant was seen by a doctor and a Rule 35 report referred to his claim of having been beaten with blunt instruments, punched, kicked and sexually tortured. He

was diagnosed with suffering from PTSD. The Judge referred to this medical evidence in paragraphs [12] and [13] of his decision and between paragraphs [15] and [17] of his decision the Judge set out evidence that arose in cross and re-examination. Between paragraphs [20] and [21] he set out the representatives' submissions and between paragraphs [22] and [29] he set out his findings with reference to case law, medical and country evidence.

18. The respondent's challenge is that in undertaking his assessment of the evidence he failed to follow GJ and failed to make findings or give reasons for his findings.
19. It is clear from the Judge's consideration of the evidence that he had regard to all of the evidence before reaching his final conclusions. He found the appellant to be a reliable witness (paragraph [24]) in respect of his his own history and in reaching that conclusion he had regard to the medical evidence and the approach that experts should take when providing such reports. In making his finding about the appellant he had regard to the psychiatrist's report which he concluded corroborated the appellant's account to a degree. As Mr Butterworth submitted to me he then also considered the appellant's claims against the country evidence that had been submitted and found there was no significant "implausibility" in his account. The Judge acknowledged there were inconsistencies but applying the lower standard of proof he found that the medical evidence could explain such inconsistencies. In paragraph [26] of the decision the Judge made it clear that although he had had regard to the respondent's concerns (set out in paragraph [7] of the Judge's decision) he nevertheless accepted the appellant's account having regard to both the appellant's own evidence, medical and country evidence.
20. Ms Brocklesby-Weller raised section 8 issues but I find no merit in ground of appeal due to the answers given by the appellant in his interview. Having accepted his account as credible he was clearly unable to claim asylum in Spain as argued by Ms Brocklesby-Weller.
21. Grounds two and three of the respondent's grounds of appeal question the Judge's approach but put simply the Judge accepted the appellant's explanation in light of the medical and country evidence. He was not required to go through each and every point because he explained in his decision the approach he had taken and what weight he attached to evidence.
22. Having made his findings, the Judge was then required to consider the appellant's position against the country guidance of GJ. Just because an account is credible does not mean his claim to be at risk would be made out. The assessment of the appellant's claim is different to assessment of risk. Ms Brocklesby-Weller submitted

(ground one of the grounds of appeal) the Judge erred in applying the guidance in GJ.

23. To assess this ground of appeal it is necessary to not only remind ourselves what GJ says but to read the Judge's reasoning at paragraphs [27] to [29] of his decision.
24. The Judge accepted his activities had never been at any significant level in Sri Lanka to automatically bring him with a risk category of GJ. He also noted he had not taken part in any diaspora activities and would therefore not automatically be considered a threat to the stability of Sri Lanka.
25. However, he accepted the appellant's account that he had been the subject of interest from the authorities and he had been mistreated long after the ceasefire and that the only reasonable inference was that he would be considered of interest to the authorities. His assessment in paragraph [28] of his decision is critical to his finding in paragraph [29] that he would face a real serious risk of harm, if returned.
26. Ms Brocklesby-Weller submitted the Judge had not followed GJ but I am satisfied that having had the benefit of hearing the appellant's oral evidence the Judge was well placed to consider the risk the appellant would face. Having accepted his post 2009 account, the Judge was entitled to conclude that the appellant would face a real risk of persecution, if returned. He reached that conclusion having analysed all of the evidence as demonstrated in paragraphs [24] to [29] of his decision.
27. On the circumstances I find no error in law in the Judge's approach and I dismiss the respondent's appeal.

DECISION

28. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the original decision and dismiss the appeal.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

FEE AWARD

No fee was payable.

Signed:

Dated:

A handwritten signature in black ink, appearing to read "SPAL" with a flourish underneath.

Deputy Upper Tribunal Judge Alis