



IAC-FH-AR-V2

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

Appeal Number: AA/07971/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 28 January 2016**

**Decision & Reasons Promulgated
On 19 February 2016**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**MURALIGANAN PURUSHOTHAMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Butterworth, instructed by Ravi Solicitors

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Sri Lanka who appealed to a Judge of the First-tier Tribunal against the respondent's decision of 23 August 2013 to remove him as an illegal entrant from the United Kingdom.
2. The appellant's history while in Sri Lanka is common ground. He was never a member of the LTTE but became a supporter, supplying medical products in 2005 and helping to transport LTTE members from Colombo to Omantha. He came to the United Kingdom on 19 November 2008 for

purposes of study. He had been granted a visa which was valid until 28 February 2012. He travelled back to Sri Lanka in 2010 for his wedding.

3. He said that in March 2011 the army started going to his house looking for him and continued to hassle his parents and search for him. Most recently in January 2013 his mother told him they came looking for him and his wife and they threatened his parents. His father was arrested and beaten and his knee was broken but he was released after seven days. This had occurred in April 2011. In addition his wife had put in a statement that she was detained on 19 September 2012 and ill-treated and released the following day after her uncle paid money and she came to the United Kingdom to be with the appellant.
4. The judge noted the detailed country guidance set out in GJ and Others [2013] UKUT 319 (IAC), and concluded that the appellant did not come into any of the relevant categories of risk set out in that decision.
5. With regard to credibility the judge noted that the appellant had made a substantial delay in claiming asylum. His claim was made on 2 July 2013. He gave different reasons for claiming late. In oral evidence he said it was because he was waiting for his wife who had been arrested and he was trying to get a visa, whereas at interview he said he was not thinking about anything and just thought it was safe in this country and did not think about anything else and had a visa until February 2012. It was put to him that he remained in the United Kingdom illegally for over a year after his visa expired and he said he did not attend the college so he did not know what to do and just wanted to stay in the United Kingdom safely. As a consequence the judge considered that section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 was of relevance. This provision states that a deciding authority shall take into account as damaging the claimant's credibility any behaviour to which that section of the Act applies and that includes delay in applying. The judge said that the argument was that the appellant did not perceive himself as being at risk and therefore did not claim asylum. He considered that this damaged his credibility. His wife had claimed that she was tortured. The fact that a person has scars is no longer a risk profile according to GJ. The judge said that also the fact that previous family members had been detained was not a strong factor which on its own indicated there was a risk profile and noted that this was disputed. He went on to say that therefore it was a reasonable conclusion that the delay in claiming asylum did damage the appellant's credibility as to his subjective fear of persecution. He believed that the appellant had not claimed asylum due to the fact that he did not perceive himself to be at risk which was consistent, the judge considered, with his findings that he would not face persecution on return. He went on to say that he did not find that the appellant's family had been detained and even if it was true he did not find that this created a risk profile. The judge saw similarities between the second appellant in GJ and the appellant in the appeal before him and concluded that he had not shown that he faced a real risk on return to Sri Lanka both in respect of the Refugee Convention and the European Convention on Human Rights.

6. Permission to appeal the decision was refused by a First-tier Judge and on renewal by a Judge of the Upper Tribunal. However on a judicial review challenge to the refusal Mrs Justice Andrews granted permission on the basis that it was strongly arguable that, although the order of the Court of Appeal in MP and NT (C5/2013/2603 and C5/2013/2607, which stated that individuals falling outside the country guidance risk categories should not for that reason alone have their claims for asylum rejected, had not been before the judge, nevertheless there were strong arguments for it being taken into account and in any event she considered that it was strongly arguable that the judge had erred in the context of the country guidance.
7. The essential basis upon which it is argued that the appellant comes within the country guidance is with reference to paragraph 7(A) of the guidance set out at the start of the determination in GJ, itself set out in full at paragraph 356 of the determination in that case, which states:
 - “(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 the renewal of hostilities within Sri Lanka are a category of persons at real risk of detention or serious harm on return to Sri Lanka.”
8. The argument in this regard essentially centres on the claimed ill-treatment of the appellant’s family as an aspect of adverse interest in him. I have set out above the judge’s conclusions on this. Essentially, as was pointed out by Mr Butterworth in his skeleton argument, the judge’s disbelief in this aspect of the claim was a consequence of his findings under section 8. In JT (Cameroon) [2008] EWCA Civ 878 the Court of Appeal noted that it is necessary to take account of the categories stated in section 8, but that it is no more than a reminder to fact-finding Tribunals that conduct coming within the category stated in the sections is to be taken into account in assessing credibility.
9. In my view the difficulty with paragraphs 31 and 32 of the determination in this regard is that they have not addressed the evidence as a whole. As I have noted above, the appellant’s activities in Sri Lanka were essentially common ground. There is his evidence at interview as to what happened and his wife’s witness statement which were relevant matters that required to be borne in mind when considering the evidence as a whole. Given that there is credible evidence with regard to other aspects of the claim, and where evidence in some detail set out in the appellant’s interview and in his statement and in his wife’s statement, the judge was required to consider these pieces of evidence and assess the matter in the round. Essentially the judge took the delay in claiming asylum and the different reasons given for that as a reason for disbelieving this aspect of the claim. In my view that is a matter of clear materiality. Had the judge given coherent reasons for disbelieving this aspect of the claim then I do not see that it could have succeeded. The appellant’s profile was a low one and it is difficult on the face of it to see why interest in him would suddenly revive in 2011 when he had been out of the country for several

years. But given the kind of adverse interest that was indicated in the evidence, this was enough in my view potentially to bring him within the country guidance or if not then as indicated in the grant of permission in MP and NT it is a matter potentially requiring consideration even if it does not fall within the guidance. I am satisfied that this level of interest, if found to be credible, is such that it could show risk under paragraph 7(A) of the guidance in GJ and Others. Accordingly there will need to be a rehearing of this appeal, although the positive findings summarised at paragraph 22 of the judge's determination are preserved. In the circumstances this is a proper case for rehearing before a First-tier Judge, and accordingly I direct that the matter is remitted for rehearing on the basis set out above by a First-tier Judge other than Judge Parker at Bennett House.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Allen