



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

Appeal Number: AA/09024/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11 April 2016**

**Decision & Reasons  
Promulgated  
On 18 May 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**R K  
(ANONYMITY DIRECTION MADE)**

**and**

Appellant

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Brooks, Counsel instructed by Biruntha Solicitors  
For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

**The Appellant**

1. The appellant appealed by way of renewed grounds of appeal and with permission against the decision of the First-tier Tribunal, Judge Graves, promulgated on 21 October 2015 dismissing the appellant's claim for

asylum, humanitarian protection and protection under the European Convention.

2. The Secretary of State had made a decision on 19 March 2015 refusing the appellant's protection claim. The appellant claimed that he feared return to Sri Lanka on the basis he would receive mistreatment owing to imputed political opinion. He claimed that the Sri Lankan army and the Karuna group had wanted him to work for them in 2004 because he had previously worked for the LTTE, although he claimed he was not involved in any fighting, and might supply information. He stated he was forcibly recruited to the LTTE in October 2003 and in April 2004 he was recruited to work for the Karuna group which had splintered from the LTTE and joined government forces. The appellant's evidence was that he joined the Karuna group and stayed with them for about two months. With the help of his cousin he claimed to have escaped and went to Qatar in 2004. It was advanced that the appellant came from the eastern province under the military command of the Karuna and as the appellant was part of that province it was compulsory to join Karuna's side and whosoever refused to join them were treated as traitors. The appellant was required to identify any LTTE members he recognised which he did and those who were identified were taken away.
3. It was after this that the appellant made arrangements to leave for Sri Lanka and travel to Qatar where he worked as a labourer. He stated in 2009 he decided to return to Sri Lanka and returned on 23 October 2010. He claims that after his arrival men from the Karuna group came to his home and detained him and he was subject to physical abuse. His release was facilitated by a bribe and he remained with an agent who obtained for him a passport and exit through the airport whereupon he arrived in the UK on 21 July and was told by an agent not to claim asylum.
4. He then began pro-Tamil activities in London but in July 2013 decided to return to Sri Lanka and when speaking to a friend on the telephone told him of the situation. A few days later his family contacted him from Batticaloa informing him that the Sri Lankan army and the Karuna group had come to his house in the belief that he was there. He was not able to make contact with his friend and he suffered from depression and was unable to continue his studies.
5. He claims that his parents had been harassed by the Sri Lankan authorities who had come to his house with a paramilitary group.
6. It contended that the Immigration Judge improperly focused upon issues and discrepancies that were entirely consistent with an individual attempting to recall events that had taken place a significant period of time ago. That he failed to identify the exact number of days should not be a reason to reject his claim. Similarly he believed that a relative had arranged through an agent to secure his release and his discrepancy in this account should be considered on the basis he was not involved in those arrangements.

7. The account of the torture that he was subject to whilst detained was not inconsistent. The judge seemed to assert the appellant was claiming he was at risk from the LTTE but he was not claiming this.
8. With respect to the appellant's ability to obtain a passport the judge was referred to the Country of Origin Information Report which stated that there was a high level of corruption in Sri Lanka and the unscrupulous actions of government officials at all levels which undermined the issuing process for many official documents. His account of having obtained a passport was entirely consistent with the objective evidence. The grounds of appeal referred to the objective evidence as recorded by the panel in **GJ and Others (post civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)** which was consistent with the appellant's account of obtaining his release through bribery. The panel in that case referred, in paragraph 275, to the possibility of leaving via the airport even when a person was being actively sought. Paragraph 170 of **GJ** indicated that having left Sri Lanka without difficulty was not probative of a lack of interest in the individual given the prevalence of bribery and corruption in Sri Lanka I.
9. Although the evidence of the appellant with respect to aspects of his claim "might appear to be extraordinary" it should be considered in the context of the situation as prevailed in Sri Lanka. The plausibility of the account should be assessed in the context of available evidence.
10. The error was most clearly demonstrated by the judge's total failure to even refer to the expert report of Dr Chris Smith and it was asserted:

*"It is fully acknowledged that the account given by the appellant was unusual in the sense that it was not of a factual matrix similar to that considered by the Tribunal in **GJ**. That therefore required, however, that the judge give even greater consideration to the evidence of an expert who could provide evidence about the country condition which was not held by the judge."*
11. The expert was asked specific questions about the appellant's account and he asserted that in his view the account was a plausible one. In those circumstances it was incumbent upon the judge to have regard to that expert opinion, whose expertise was not challenged. The judge was then required, if she rejected that evidence, to then give reasons why, despite the expert expressing the views that the evidence was in fact plausible, she found it inconsistent with the country conditions.
12. Further, the judge failed to have regard to the letter from the Sri Lankan Member of Parliament who provided corroboration of the fact that his family had been harassed by the Sri Lankan army and members of the Karuna group. The failure of any regard to this evidence was a manifest error of law in that it provides direct corroboration of the fundamental aspect of the appellant's account.

13. Upper Tribunal Judge Canavan acknowledged that the judge had made credibility findings in each aspect of the appellant's claim but granted permission on the basis that it was arguable that the judge should have taken into account material evidence contained in the expert report of Dr Smith which was evidence which was likely to be material. It was open to the judge to reject the evidence or explain why little weight was placed on the evidence. It was arguable it was sufficiently important this should have been taken into account.

14. A Rule 24 response was served contending that the judge had directed himself appropriately in a detailed and thorough determination and had provided a plethora of reasons why the appellant was not believed and made many adverse credibility findings and notwithstanding the fact the judge had made no direct reference to Dr Smith's report, it was clear that the judge had given careful and anxious scrutiny to all documents before the Tribunal regardless of whether they had been specifically referred to in the determination. It was not incumbent upon the judge to refer to each and every piece of evidence and in **VHR (unmeritorious grounds) Jamaica [2014] UKUT 00367** it was found:

*"Appeals should not be mounted on the basis of a litany of forensic criticisms of particular findings of the First-tier Tribunal whilst ignoring the basic legal test that the appellant has to meet."*

15. As McCombe LJ in **VW (Sri Lanka) [2013] EWCA Civ 522** 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 that the judge's decision is legally flawed because it did not deal with the 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."*

16. At the hearing before me it was submitted by Mr Brooks that Dr Smith was an expert who had given evidence widely in Tribunal hearings and who had identified aspects of the appellant's case which were consistent with the version of events. The judge had given no explanation as to why he had disregarded the report of Dr Smith which showed the appellant's version of events to be credible. It was submitted by Mr Brooks that it was clear that it was not just those who fitted into **GJ** who would be at risk and the question was whether this appellant could be believed and if he was detained, whether he was at risk of ill-treatment. Would he have a perceived association in connection with the LTTE? It was the activities in Sri Lanka which were a key to the appellant. His account was entirely consistent with hailing from the Eastern province and Judge Graves' assessment lacked understanding. Despite having a low-level involvement with the LTTE he would still be of interest to the authorities. Indeed Dr Smith referred to the Karuna group as being "absolutely

ruthless" in its recruitment of cadres of the LTTE. The judge's finding that it was not credible that the Karuna group would go to such lengths to recruit the appellant was at variance with this objective information. That the appellant was able to give intelligence on other members of the LTTE was important. His account of being detained and interrogated was internally consistent. The authorities had an interest in the former LTTE members. The judge's treatment of the bribes finding that the appellant's account was not believable was inadequate. The question of bribes was addressed in paragraph 58 of Dr Smith's report which was that the authorities were even suspicious of Tamils with a low profile and they did not escape surveillance. There was evidence that people were chopping and changing all the time and that people were joining different groups.

17. Mr Melvin submitted that the grounds were an attempt to re-argue the case and the points raised by Mr Smith were not material to the conclusion. There was no challenge to the findings on the sur place activities and all of the points were dealt with by the country guidance. It was clear that the UNHCR guidelines had been rejected and it was not the case that anyone with a low-level of profile was at risk. There was nothing in the appellant's case which showed that he was at current risk and the judge had addressed the country guidance and the vast amount of objective evidence. There was nothing in the points raised which could result in the appellant being on a stop list or wanted list. I was referred to **VHR** and it should be noted that Dr Smith had been criticised widely in various cases, not least in **LP** and **EK and UK [2011]**. There was no material difference between this appellant and the principles of **GJ** applied.
18. I asked Mr Brooks what it was that Dr Smith was adding over and above that of the objective evidence which had been supplied.
19. I make the following points with regards to the determination of Judge Graves. It is clear that he addressed his mind to the claimed traumatic experiences of detentions and the fact that there may be minor inconsistencies and where appropriate the benefit of the doubt should be given. The judge also reminded himself that there had been a lapse of time in years [paragraph 24]. With that in mind, the judge has made a series of credibility findings against the appellant and noted at paragraph 44 the following:

*"I consider the appellant's case both against the guidance given in GJ and also in the light of the country evidence before me. I do not accept that the Appellant has, or would be perceived to have, a significant or any more than a very low level role in diaspora activities. Nor that any such activities would be perceived to be with the aim of destabilising the government or that they would have come to the attention of the authorities. I do not accept that he falls into any other risk category or that even to the lower standard, he has established that he may be on a wanted or stop list. The Appellant's case is, I find inherently weak, that the government and*

*parliamentary have been pursuing him for years, simply because they want to recruit him."*

20. Although the judge has not specifically named the report of Dr Smith it should be identified that the same expert gave evidence on country conditions in Sri Lanka to the Upper Tribunal in **GJ** and in Appendix J to that Country Guidance the Tribunal stated as follows;

*'Dr Smith has provided us with four written reports; two upon the request of the third appellant, dated 24 January 2013 and 28 January 2013, one at the request of the second appellant dated 30 January 2013 and one at the request of the first appellant dated 13 August 2012. These reports cumulatively total 155 pages. Although these reports deal specifically with the circumstances of the appellants that requested their production, each primarily deals with the general circumstances in Sri Lanka'.*

21. It should also be noted that the Secretary of State annexed the COI for Sri Lanka for 2012 as part of the background evidence, and which details the history and background of the Karuna group (TMVP) group and notes human rights abuses.
22. I have carefully considered that report and noted the questions that were asked. The opening reference regarding instructions to Dr Smith and recorded in his report is at [21] as follows:

*"I have been asked by Kanaga Solicitors, to comment upon the general situation in Sri Lanka relating to the risk and vulnerability of returned asylum seekers to Sri Lanka. In particular I have given the following instructions and offer my opinion."*

23. The expert then set out the nine questions and instructed him to address his mind:

*"(1) Is the Appellant's description of his forced involvement with the Karuna Group consistent with the situation as it prevailed in Sri Lanka at that time?*

*(2) Did the Karuna group commit human rights violations with respect to members of the LTTE?*

*(3) Is it plausible that the Appellant would have been able to escape the Karuna group through the payment of a bribe?*

*(4) The Appellant has described having been detained at the instigation of the Karuna group when he returned to Sri Lanka in 2009, after the conflict had finished. Is this plausible?*

*(5) The Appellant has described members of the group asking him to join - even though he had deserted - and suspecting him of involvement or planned involvement with the LTTE. Is this plausible?*

- (6) *The Appellant has suggested that the Karuna group may have detained him in order to obtain a bribe to allow his release. Is this credible?*
- (7) *The Appellant has described the fact that he informed a friend that he was intending to return and subsequently the authorities went to his home. Are phone calls monitored? Do the authorities still use informers to provide information to them?*
- (8) *The Appellant has stated that since then his family have been visited by the authorities with paramilitaries. Did paramilitaries still operate in Sri Lanka in 2014?*
- (9) *The Appellant has described his family being visited by the authorities and he has been accused of involvement with the LTTE in London. Do the authorities believe that the LTTE is active?*

24. In response to the first question the expert merely states with regard to the forcible recruitment by the Karuna group in April 2004 which the appellant claims:

*"24. This is entirely consistent with my understanding of events in the eastern province at this time. The Karuna group sided with the government and proved absolutely ruthless in its fight against the LTTE and its recruitment of former cadres."*

25. The expert makes no further opinion other than this generalisation and no reference to particular reports. In his preamble the expert states that much of his information is from secondary sources and it is difficult to keep up to date because government officials are discouraged from engaging with researchers such as him. The expert himself cites material such as the COI 2012 which was available to the judge independently. It is not disputed by the judge that the Karuna group did indeed recruit those from the LTTE during that period but there is nothing in the general assertion which cannot be found in the country background evidence for example the List of Incidents of Violence and the Article in the Tamil Guardian (conscripted) and/or **GJ** to which the judge refers.

26. One of the reasons the judge found against the appellant at paragraph 33 was that the appellant was able to remain in Colombo between October 2010 and July 2011 without further problems. This was **after** the alleged recruitment. The judge also remarked that the appellant intended to return to Sri Lanka in 2013 for the purpose of a holiday to see his family and produced an invoice. The judge found,

*"this is entirely inconsistent with his claim to have fled Sri Lanka in fear of persecution. If he was in such fear it is difficult to understand why he would plan a holiday home".*

27. Indeed, it is not disputed by the judge that the Karuna was involved in recruitment. What is disputed is that *this* appellant was recruited and as the expert states at [26] in response to question 2

*“this aspect of the conflict has been very poorly documented and material evidence is scant. However, there is little argument with regard to the brutality of this internecine conflict and as such human rights violations would have been committed on both sides’*

The expert effectively makes generalisations about the conflict and human rights abuses but adds nothing more than is available in the country background material and/or **GJ**.

28. In response to question 3 the expert adds no more to that which is contained in **GJ** with respect to bribery in Sri Lanka and it was quite clear that the judge has referenced **GJ** extensively throughout the determination.
29. In response to question 4 the expert merely relies on interviews but also refers to a Home Office Country of Origin Information Report dated 2004 and makes findings in respect of the mechanisms of surveillance and the systematic and centralised collection of records provide the basis for the stop lists. Once again much of this information is available in the country guidance on **GJ** and the expert’s finding at paragraph 40 of his report “irrespective of whether the appellant returns under escort or independently he will be questioned at the airport” appears to rely on information which predates **GJ** which reviewed all of the information in relation to returns from the UK to Sri Lanka.
30. At question 5 the expert was candid and self explanatory stating,
- “this instruction is extremely case-specific and is impossible to answer without a great deal more detailed information that is available in the bundle provided and with additional research”*
31. In relation to question 6 the expert states that he has addressed the issue relating to desertion but he has merely referred to the fact that bribery in Sri Lanka is extremely common and does not take the case further forward.
32. Questions 7 and 8 refer to general assertions in relation to the security situation in Sri Lanka and the authorities’ ability to monitor phones and that paramilitary groups continue to exist.
33. In response to question 9, the Upper Tribunal covered the question comprehensively in relation to the authorities’ attitude to the LTTE and to security and indeed Dr Smith refers to **GJ**. In **GJ and Others** the Upper Tribunal specifically considers and gives guidance as to who is indeed at risk.



34. Overall, the judge made a series of credibility findings against the appellant which the expert report cannot attempt to redress, not least that the appellant claims that he left Sri Lanka in 2004 because of persecution and yet returned in October 2010 and planned to return again in May 2013. The judge made a series of findings at paragraph 26 that the appellant did receive a curtailment letter, his asylum claim was made some years after his arrival [2005] and only when his leave to remain had expired. He only raised a claim that he was in fear of persecution when he was already in detention.
35. The judge identified numerous discrepancies and inconsistencies within the appellant's claim. For example, at paragraph 27 how he escaped detention and who assisted him; at paragraph 28 the length of his detention and at paragraph 29 conflict as to whether he was tortured or not and indeed in his screening interview he claimed there was no allegation or assertion of torture. By the time of the substantive interview the appellant stated he was beaten (AIR, 86).
36. At paragraph 30 the judge also describes how the purpose of his detention appeared to have changed between his screening interview and his substantive interview in his later statement and although the differences were slight they were relevant. At [30] the judge notes that the appellant's description of the Karuna group's interest in him was inconsistent with the background material as the war had ended. Clearly there was a determination by the Karuna group to recruit in the earlier period but the judge was referring to a later time period at paragraph [30].
37. In particular the judge sets out at [31] that the appellant's *claims* would suggest that he would even be at risk of the LTTE and yet he did not mention this in the interview. Overall the account was found to be altered and embellished.
38. Overall, at paragraph 32, the judge gives reasons as to why he did not accept the authorities would have any interest in the appellant and states that the

*"apart from the internal inconsistencies between the appellant's accounts I find the appellant's claim is not consistent with the background material on Sri Lanka".*

Indeed the judge makes the point that the appellant was low level and any information would be out of date and states:

*"There were vast bundles before me about abuses by the Sri Lankan Government against Tamils but the appellant's case is not that he has been pursued by the government for his previous support for the LTTE but because they want him to work for them."*

39. Overall however it is the appellant's claims at paragraph 33 which fundamentally undermine his claim. Even if all that is suggested in the

expert report is correct it was not accepted by the judge that the appellant would, having left the Karuna group in 2004, avoid interest for four months, until leaving for Qatar, return to Sri Lanka, live in Colombo between October 2010 and July 2011 without further problems and then intend to holiday there when he claimed to have fled Sri Lanka in fear of persecution. This is with or without a false passport. The judge noted that the appellant left and returned on his own passport and although bribery is endemic, essentially the judge did not accept that the appellant would even consider returning if he were afraid of persecution. The judge made pertinent findings in relation to the appellant's claim that he had told his friend when he was returning and the friend tipped off the authorities but found it was not credible that the authorities would turn up at his premises *prior* to when the appellant had informed he would return and effectively give the appellant notice. It was open to the judge to make this finding.

40. Overall his account was not considered to be credible. Even if there were a material error of law in failing to cite the report of Dr Smith I found this has made no material difference. Because of the nature of the report, not least the generalisations there is no indication that the judge did fail to take it into account when referring to the background evidence and further the report, on the basis of my observations, could not take the matter further.
41. The letter from the Member of Parliament was obtained on 25 September 2015 and not referred to in Mr Brook's submissions. This is a last minute letter obtained from a said Member of Parliament. There was as the judge states no letter or statement from his family despite a claim in the MP's letter that the paramilitary group and Sri Lankan army wanted his son to be handed over. I am not persuaded that this takes the case any further forward and in view of its late production. **Tanveer Ahmed IAT [2002] UKIAT 00439** states that "in asylum and human rights cases it is for an individual claimant to show that a document on which he seeks to rely can be relied on" and further "a document should not be viewed in isolation. The decision maker should look at the evidence as a whole or in the round (which is the same thing)". In view of the findings on credibility and in view of the shortcomings of the documents itself in that it was late in production, little weight could be placed on the documentation supporting the claim. The judge had noted at [26] that the appellant had produced false documentation to obtain entry clearance as a Tier 4 student and appeared to have little idea of what he was studying even though he had claimed to be on a full time course for two years. This background only served to undermine the appellant's account further.
42. The challenge to the First-tier Tribunal Judge's decision is an attempt to re-argue the appeal by contesting a thorough and well reasoned decision. That attempt does not succeed.

### **Notice of Decision**

43. I find there was no material error of law in the First-tier Tribunal Judge's decision and the decision shall stand.

**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 12<sup>th</sup> May 2016

Deputy Upper Tribunal Judge Rimington