Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: AA/10992/2015
AA/10985/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18th May 2016	**On 7th June 2016**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

APDS
PSR
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr V P Lingajothy, Counsel instructed by Linga & Co
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Sri Lanka and are husband and wife. The second Appellant is the dependant of the first and his appeal depends on whether the first Appellant succeeds in her claim for asylum. I shall therefore refer to the first Appellant as the Appellant throughout.

2. The Appellant was born on 21st October 1976. Her appeal against the decision of the Respondent to remove her from the UK and refuse her

asylum claim was dismissed by First-tier Tribunal Judge Bowler in a decision promulgated on 15th March 2016.

3. The Appellant came to the UK on 11th July 2011 on a Tier 4 (General) student dependent partner visa, her husband having come to the UK in March 2011 on a student visa. The Appellant's leave was extended and an application for leave as an extended family member of an EEA national was refused. On 23rd January 2015, the Appellant claimed asylum and attended a screening interview. She was served with removal directions as an overstayer.

4. The Appellant attended the first appeal hearing on 30th November 2015, but this was adjourned to enable the Appellant to obtain a medical report from the Medical Foundation. The hearing was adjourned to 25th February 2016 on the basis that the report would be ready for 16th January 2016. When the matter came before First-tier Tribunal Judge Bowler the medical report was not available. The judge refused the application for the adjournment on the basis that the Appellant had had plenty of time to obtain the report and it was clear from the Medical Foundation's letter that the delay was caused at least in part by the Appellant's representatives.

5. The judge stated at paragraph 13: "In any event a medical report about the alleged ill-treatment of the Appellant in Sri Lanka and its after effects was not the determining factor in this case." The judge stated that if she concluded that the Appellant had been ill-treated she would have to apply the country guidance case of GJ [2013] UKUT 319 and MP [2014] EWCA Civ 829 in any event.

6. The judge heard evidence from the Appellant and found that she was generally credible about her detention and ill-treatment in Sri Lanka, in spite of the delay in making her asylum application and certain minor inconsistencies. The judge gave several reasons for why she accepted the Appellant's general credibility.

7. The judge found that since the Appellant left Sri Lanka her parents had not had any problems with the authorities. The Appellant left Sri Lanka in July 2011 and her parents were visited by the authorities in September 2011, but they had not been threatened and no threats have been made in relation to the Appellant after her departure for the UK.

8. The judge found the Appellant's evidence in relation to the arrest warrant to be insufficient to show that one had in fact been issued. There was no mention of an arrest warrant when the authorities visited the Appellant's parents in 2011 and the Appellant was assuming that one had in fact been issued.

9. The judge considered the country guidance cases of GJ and MP and concluded that the risk categories which were potentially relevant to the Appellant were:

"(7)(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; and

(7)(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."

10. The judge considered whether the Appellant's activities may be expected to have led her to be placed on a watch list or whether the activities were sufficient for her to fall within paragraph (7)(a). She made the following findings:

"45. [The] Appellant claims that she was told by her parents that she is on the 'stop list'. This was apparently on the basis of someone else telling her parents that. Even applying the lower test of proof I find that this assertion is insufficient to find that the Appellant is on the stop list. She said at her asylum interview that she thinks there is an arrest warrant for her because she has left the country and therefore broken the terms of her release, but I have found above that there is insufficient evidence to find that an arrest warrant has been issued. Her parents have not been visited by the authorities since September 2011. She managed to leave the country without any problems despite using her own passport. That was six months after leaving detention, plenty of time for her name to be on a stop list at the airport as someone who should not leave the country, yet she managed to travel without problem. Even if she was not on a list of people who should be stopped from leaving the country, there is little evidence of the authorities actively looking for her after she failed to report to the police station. I therefore find that [the] Appellant is not on a stop list.

46. [The] Appellant was not involved herself in Tamil separatism. Her only link was via her boyfriend whom she stopped seeing in 2008 and lost contact with shortly after. I find that [the] Appellant does not have 'elaborate links' with the LTTE. Neither she nor her family have been members of the LTTE or otherwise directly involved with the LTTE. This is not a person with high level involvement. [The] Appellant has not provided evidence that Siva was a significant figure within the LTTE and the Appellant did not know what Siva did for the LTTE and I find that Siva knew about a bombing and therefore warned the Appellant not to go out but that is insufficient for me to find that Siva was a significant figure within the LTTE.

47. In the UK I find that the Appellant has not been involved in any diaspora activities. She attended one Heroes Day event in November 2015. She said that this was just to watch and she was not involved in the events. I find that attendance at one such event is insufficient to constitute activity likely to be perceived by the Sri Lankan government as activity threatening the integrity of Sri Lanka as a single state.

48. I recognise that following the analysis in MP, diaspora activities are not a prerequisite of risk, but that is where there is other evidence showing particular grounds for concluding that the Sri Lankan government might regard the Appellant as posing a current threat to the integrity of Sri Lanka as a single state. There is no such evidence in this case. Mr Lingajothy submitted that the fact that the Appellant is Sinhalese means that because of her previous involvement with an LTTE member she would be seen as a threat as the LTTE would need Sinhalese help if they were to restart their activities. This is highly speculative and the Appellant's limited links to the LTTE via Siva ended in 2008. I find that the fact that she is a Sinhalese person who previously worked for the government and who had a relationship with a Tamil involved with the LTTE in 2008 is insufficient to conclude that the Sri Lankan government might regard the Appellant as posing a current threat to the integrity of Sri Lanka as a single state.

49. I have considered whether the Appellant would be at risk as a result of failing to comply with the terms of her release in 2011. However, the Appellant confirmed that the release was unofficial. Given the lack of interest in her shown by the authorities and the unofficial nature of the release terms I find there is insufficient likelihood (even applying the lower burden of proof) that she would be at real risk five years after the release if she returns to Sri Lanka.

50. I have considered whether the Appellant is entitled to protection under the ECHR as a result of her medical conditions now. She is not receiving any treatment in the UK for medical problems. Her physical problems are described by her as joint pain, headaches, vomiting, dizziness, hearing loss in her right ear and problems with her right eye. She treats her pain by taking paracetamol which she buys for herself. There is no evidence of mental health needs. It may be that such evidence would have been provided by the Medical Foundation report. However, the Appellant has seen the Medical Foundation at least twice with the first visit in October 2015 and another in December 2015. There is no evidence that the Medical Foundation concluded that her mental health was so impaired that she required medical attention. I would expect that if she had been assessed as needing mental health treatment because of suicidal ideation or other significant mental health problems the Medical Foundation would have referred her for such treatment, or it would have been recommended, before the report was finalised and this information would have been available at the hearing."

11. The Appellant appealed on five grounds:

(i) The judge should have adjourned the hearing to enable the Appellant to submit the medical report and it was unfair to continue the hearing given that such a report would have been ready a couple of months later;

(ii) There was evidence to show that the Appellant was currently wanted by the authorities given that her house was visited by the authorities, who were looking for her. The judge accepted that the Appellant had been detained and ill-treated and that the authorities had looked for her after she left Sri Lanka. Therefore, there was a presumption in

favour of the Appellant that the authorities when searching for her had arrived at her home with an arrest warrant;

(iii) The Appellant was able to travel to Colombo Airport without incident because it was well-known that this could be done through an agent without immigration officials. The fact that the Appellant was able to leave Sri Lanka without difficulty or incident was not probative of a lack of adverse interest in her;

(iv) Bribery and corruption amongst Sri Lankan officials was widespread and having accepted the Appellant's detention, torture and rape it was incumbent on the judge to find that the authorities would have an adverse interest in the Appellant. The Appellant's detention in Sri Lanka would have been recorded and therefore if returned she would be of adverse interest and it was highly likely she would be detained and tortured. Because every detention is recorded the Appellant's details would be known to the authorities as an absconder and therefore she would appear on a stop list or watch list:

(v) The Appellant does not need to be a high profile LTTE activist or member to be at risk on return because the procedure at the airport even if the Appellant was not on the stop list did not reduce or eradicate the risk of harm because the authorities were interested in the Appellant or would become interested in her when she was returned as a failed asylum seeker. If she was not arrested at the airport it was likely that she would be arrested because she had to verify her arrival with the CID or the police in her own home area.

12. In summary, the Appellant fell within the risk categories of GJ and there was a reasonable degree of likelihood that she was on the stop list because there would be a record of her previous detention and ill-treatment and the fact that she had absconded.

13. Permission to appeal was granted by First-tier Tribunal Judge McDade on 7th April 2016 on the ground that it was arguable that the judge should not have proceeded with the hearing in the absence of a medical report from the Medical Foundation because the Appellant stated that she was suffering from serious medical conditions including psychological conditions and that a finding or otherwise in this regard would impact upon the weight that could be given to the Appellant's evidence at the hearing. The lack of a medical report may have been the fault of the legal representatives but was not a fault of the Appellant, who should not be prejudiced as a result.

14. Mr Lingajothy submitted that the medical report went into great detail about the Appellant's mistreatment, in particular the fact that she had been raped on several occasions. There was also a clear diagnosis of PTSD, depression and suicidal ideation. The medical evidence was relevant to the extent of the mistreatment the Appellant had suffered and this was relevant to whether the authorities would have a continued interest her. If a person was perceived as acting against Sri Lanka or a high profile

member of the LTTE then she would fall within one of the risk categories in GJ.

15. The medical evidence was relevant to the judge's findings at paragraph 45 and 48. The type of torture was indicative of the perception of the regime, namely the Appellant was severely tortured and accused of breastfeeding the Tamil Tigers. Therefore, they perceived her to have some high level involvement with the LTTE which would make her of interest on return to Sri Lanka.

16. The medical history set out at paragraph 9 of the medical report clearly showed that the Appellant was not a low level member. The judge's finding at 48 was unsafe because, from the ill-treatment meted out by the authorities, it was clear that there was such animosity towards the Appellant that they were certain she was involved with the LTTE. The treatment the Appellant received in detention, which is disclosed in the medical report, shows that the Appellant is perceived to be a high profile member of the LTTE and therefore she would be of interest if returned. She came within risk category (7)(d) of GJ. There would be a record of the Appellant's detention and therefore there was a reasonable degree of likelihood that she would be on some form of 'stop' or 'watch' list.

17. Further, the medical report was relevant to the judge's assessment of her current mental and physical wellbeing. The judge's findings were not open to her given the material in the medical report and the judge had acted unfairly in failing to adjourn the hearing to enable the Appellant to submit such a report.

18. Mr Tufan submitted that the medical report did not take matters any further because the judge accepted the Appellant's account in its entirely. The submission that the Appellant's ill-treatment was proportionate to her perceived LTTE activity was misconceived. Ill-treatment depended on the mind-set of the perpetrator. The Appellant's connection to the LTTE was through a Tamil boyfriend which ended in 2008.

19. Risk category (7)(d) of GJ was qualified by paragraph (9) which stated:

> "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."

20. The Appellant had come to the UK as a Tier 4 Student dependant and she had later claimed asylum. She had failed to produce sufficient evidence

that she was on a 'stop' list and the judge's findings at paragraph 45 were not irrational. There was no material error of law.

21. In response, Mr Lingajothy submitted that, had the judge known the level of torture the Appellant had experienced, the judge would not have come to the conclusion that she was not on a 'stop' list. The medical evidence was highly relevant to the risk on return and enhanced the Appellant's case. There would be a record of the Appellant's detention and ill-treatment on two occasions and this was sufficient to satisfy paragraph (7) (d) of GJ. There was a reasonable degree of likelihood that she was on a 'stop' list.

Discussion and Conclusion

22. The judge found that the Appellant was arrested and severely tortured by the Sri Lankan authorities on two occasions in 2009/2010 and after she returned from India in 2010/2011. The Appellant was released from detention on payment of a bribe and she left Sri Lanka in July 2011 using her own passport. Her travel had been arranged by an agent who had prepared her visa application and accompanied her to the airport. The agent had spoken to people at checkpoints and they allowed her through having checked her passport. The Appellant's parents were visited by the authorities in September 2011.

23. The Appellant was arrested and detained because her boyfriend was involved in Tamil separatism. Neither the Appellant nor her family were involved and the Appellant did not have elaborate links to the LTTE. Her boyfriend was not a high level member even though he knew about a bombing and had warned the Appellant about it. However, there was insufficient evidence before the judge to show that he was a significant figure. The Appellant had not been involved in any diaspora activities and had attended Heroes Day just to watch the events.

Ground 1

24. The Judge accepted the Appellant's account that she had been detained and ill-treated. The medical evidence showed that her scars were highly consistent or consistent with the ill-treatment she described. Given the judge's acceptance that the Appellant was detained and ill-treated on two occasions the medical report in that respect takes matters no further.

25. There is also a portion of the medical report which deals with the interpretation of psychological evidence. The Appellant's evidence before the judge was that she was not receiving treatment because she did not want to tell the doctor about her problems in the past.

26. The medical report from the Medical Foundation states that the Appellant's symptoms confirm a diagnosis of severe depression and her GP had recently commenced the Appellant on anti-depressants. There

were also symptoms congruent with a diagnosis of post-traumatic stress disorder and that the Appellant's suicidal ideation was a matter to monitor should she be removed, but that she had not made any plans or suicidal attempts.

27. Given the information in the medical report, the judge's decision to continue with the hearing without the report was not unfair. The judge accepted the Appellant's claim at its highest and accepted her detention and ill-treatment. There was nothing in the report which would have altered the judge's finding in that respect.

28. Mr Lingajothy submits that the report would have been relevant to the judge's assessment of risk on return because, had the judge fully appreciated the serious level of ill-treatment the Appellant had suffered, which she disclosed in the report in great detail, the judge would have made a finding that she was of adverse interest to the authorities. I am not persuaded by this submission. It does not follow that the level of ill-treatment was proportionate to any continuing adverse interest in the Appellant.

29. In relation to the Appellant's physical and mental wellbeing, again, there was nothing in the report which would render the judge's finding at paragraph 50 unsafe, namely that the Appellant was not entitled to protection on ECHR grounds as a result of her medical conditions. The fact that she suffered from depression and PTSD and had some suicidal ideation was insufficient to engage Articles 3 or 8.

30. Accordingly, I find that there was no unfairness in the judge's refusal to adjourn the hearing in order for the Appellant to submit a medical report. Having accepted the Appellant's account, the Appellant's current mental state would not put her at risk and there was nothing in the medical report that supported her claim to be of adverse interest to the authorities or to be on a 'watch' list. The level of ill-treatment was not indicative of any future interest on return.

Ground 2

31. Ground 2 is misconceived and amounts to a disagreement with the judge's findings which were open to her. The judge's conclusion that the Appellant's evidence of an arrest warrant was insufficient to show that one had in fact been issued was open to her on the evidence. The fact that she had been detained and ill-treated did not give rise to a presumption that the authorities would come searching for her at her home and therefore an arrest warrant would have been issued. The evidence which was before the judge was that the authorities visited the Appellant's parents in 2011. There was no arguable error of law in the judge's finding that the Appellant had failed to show that there was an outstanding arrest warrant.

Ground 3

32. Although it is possible to leave Sri Lanka through official channels on payment of a bribe, that was not in fact the Appellant's evidence. The Appellant stated that she had left Sri Lanka with the assistance of an agent who prepared her visa application and accompanied her to the airport. The agent had spoken to people at checkpoints and she had been allowed through using her own passport with a visa obtained in her own name.

33. Accordingly, although leaving Sri Lanka without any difficulty or incident was not necessarily probative of a lack of adverse interest, the judge's finding that looking at the evidence as a whole, there was no interest in the Appellant was a finding which was open to the judge on the evidence before her. There was no material error of law in relation to the judge's finding that the Appellant was of no interest to the authorities when she left Sri Lanka in July 2011.

34. The judge accepted that the Appellant was detained and ill-treated. There was also evidence that there would be a record of any such detention, but this did not necessarily lead to a finding that the Appellant would be at risk on return. The judge was obliged to consider the country guidance and the risk categories set out in GJ, in particular paragraph (7) (d) in respect of this Appellant. The judge specifically dealt with whether there was a reasonable degree of likelihood that the Appellant was on a 'stop' list and, for the reasons she gave at paragraph 45, she concluded that there were not. I find that the judge's findings at paragraph 45 were open to her on the evidence before her and she has given adequate reasons for her conclusion that there was little evidence of the authorities looking for the Appellant after she failed to report to the police station. Further, there was insufficient evidence to find that an arrest warrant had been issued and therefore she did not accept that the Appellant was on a 'stop' list.

35. The Appellant's involvement with the LTTE was not sufficient to show that she would be perceived as someone who was a threat to the integrity of Sri Lanka or perceived to have a significant role in relation to post-conflict Tamil separatism. She had not taken part in any significant activities since she left Sri Lanka and although returning as a failed asylum seeker, there was nothing in the risk categories set out in GJ which would indicate she would be at risk on return. There is no arguable error of law in the judge's findings at paragraph 48.

Ground 5

36. Ground 5 submits that, even if the Appellant was not a high profile LTTE activist or member, and even if she was not on a 'stop' list, then she would be at risk on return because all those returning to Sri Lanka were likely to be detained at the airport or shortly thereafter when they registered with the authorities. There would be a record of her previous detention and severe ill-treatment which would result in further detention and torture on return.

37. I find that the final ground is not made out and is contrary to the country guidance case of GJ. It is not sufficient for the Appellant to establish the risk on return on the basis of previous detention and ill-treatment. According to GJ there had to be something more than that, either a threat to the integrity of Sri Lanka or evidence that there was an outstanding arrest warrant or that an individual's name appeared on a 'stop' list.

Summary

38. The judge's factual findings were open to her on the evidence before her. The judge properly applied the country guidance cases of GJ and MP to the facts as she found them. I conclude that there was no arguable error of law in the decision dated 15th March 2016. Accordingly I dismiss the Appellant's appeal.

Notice of Decision

The appeal is dismissed

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 her or any member of her 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.

J Frances

Signed Date: 27th May 2016

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

J Frances

Signed Date: 27th May 2016

Upper Tribunal Judge Frances