



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

Appeal Number: AA/11412/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 9 September 2015**

**Decision & Reasons Promulgated
On 7 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

**MJ
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Spurling, Counsel instructed by Nag & Co Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Appellant is a citizen of Sri Lanka born on 19 August 1992. He appealed against the decision of the Secretary of State dated 28 November 2014 to remove him from the UK as an illegal entrant following a refusal to grant him asylum, humanitarian protection and protection under the European Convention.
2. The Appellant left Sri Lanka on 26 July 2010 and entered the UK on the same day with entry clearance conferring leave to enter as a student. The

Appellant's history in Sri Lanka was that whilst he was a student he became friendly with two Tamil-speaking Hindu boys from Jaffna named Rathees and Thayparan, who were lodging in a room above a grocery shop. When they returned to Jaffna in December 2008 they stored their belongings at the Appellant's house. In January 2009, Rathees and Thayparan returned to resit an examination and stayed with the Appellant before returning to Jaffna. In June 2009, they returned to start their A-levels and moved back to their former lodgings above the grocery shop. They left a few of their possessions with the Appellant and took the rest.

3. On 18 November 2009, the Appellant was present with Rathees and Thayparan when the police raided their lodgings. All three were arrested. Police searched the Appellant's house and found bags belonging to Rathees and Thayparan and material relating to the LTTE. The police suspected that the Appellant was a member of the LTTE. The Appellant was not aware what these documents were and he was not questioned about them. The police did inform him that they had found photographs of the Pologolla Dam in which the Appellant was featured. The Appellant was interrogated, tortured and sexually abused by police officers. He was held in detention for around 80-85 days initially at Kandy Police Station and then on remand in Bogampara prison. The Appellant's father instructed a lawyer and he was released on bail 30 April 2010 on the condition that he reported weekly to Kandy police station. His father was also required to pay a security of Rs 500,000. The Appellant continued to report to the police station until 18 July 2010. He left Sri Lanka on 26 July 2010 on a student visa with the assistance of an agent and travelled to the UK. On 3 August 2010 the Appellant's father was arrested by order of the court as the Appellant had breached his reporting conditions and had failed to answer a summons. The Appellant's father was released on 11 November 2010.
4. Since being in the UK the Appellant found that he could not concentrate on his studies which he ceased in 2012. In the same year, he formed a relationship with an EEA national and they married in January 2013 but that marriage was not sustainable. Fearing that he would be returned to Sri Lanka and being aware of the unexecuted warrant, the Appellant applied for asylum on 6 November 2013.
5. On 29 April 2013 the authorities ordered the progression of the Appellant's case and a further summons was served. As the Appellant failed to appear, the court ordered the re-arrest of his father. The father was arrested on 3 May 2013 and released due to ill health on 10 December 2013.
6. The Appellant's appeal was heard before First-tier Tribunal Judge Amin on 24 March 2015 and he dismissed that appeal on 8 April 2015 on all grounds. The judge noted inconsistencies in the account which undermined the Appellant's credibility [69]. The judge did not find it credible that the Appellant would be detained and tortured and yet not be questioned about the documents found by the police [78 & 79]. He thus concluded that the Appellant was of no interest to the authorities. The

judge was not satisfied the Appellant was tortured because his description of his injuries did not reflect the severity of the beatings described and his assertion that he had been sexually abused was vague [80]. He found the Appellant had exaggerated the length of his detention and his evidence was at variance and not supported by the documentary evidence [82 & 83].

7. Nevertheless, the judge accepted the Appellant had been detained but not for the period claimed [83]. The judge further accepted the documents produced by the Appellant had not been forged and accepted the existence of an arrest warrant. The judge found that the authorities followed due process in detaining the Appellant and subsequently releasing him on bail with a surety [85 & 86]. The judge referred to the head note in **GJ (Sri Lanka) [2013] UKUT 00319** and found that the Appellant's account of past and future persecution was inconsistent with that country guidance. However, the judge found that that guidance did not apply to an Appellant who had been released on bail after being subjected to the due process of law, which was further applied to his father [88, 89, 90 & 91]. The judge concluded that the authorities had a very low interest in the Appellant as he obtained a new passport in 2010 and was able to leave, and concluded that he would not be perceived to be a threat to the integrity of Sri Lanka as a single state because he was not perceived to have a significant role in relation to post conflict Tamil separatism. The judge noted no evidence had been produced to show that the Appellant's name was on a stop list. The judge acknowledged that there was an arrest warrant outstanding against the Appellant as a consequence of his failure to abide by bail conditions, and that, the Appellant was likely to face a continuation of the prosecution that had been initiated against him. Nevertheless, he concluded that the Appellant would be prosecuted under the due process of the law and not persecuted [98 & 99]. Accordingly, the judge dismissed the appeal.
8. An application for permission to appeal was made on the grounds that the judge erred in requiring corroboration and failed to follow applicable country guidance, namely, **GJ** (supra). On 30 April 2015 permission to appeal was granted by First-tier Tribunal Judge Pooler on all grounds.

Conclusions

9. At the hearing, on behalf of the Appellant, Mr Spurling relied on his grounds of appeal and elaborated upon them. On behalf of the Respondent, whilst she opposed the appeal in a written Rule 24 response, at the hearing Mr Tufan, whilst not formally conceding the appeal, adopted a more pragmatic approach. He acknowledged that no challenge had been laid by the Respondent against the judge's findings that accepted the Appellant had been detained, bailed and was subject to an outstanding arrest warrant as was supported by documents not found to be forged. These accepted facts he acknowledged put the Respondent in some difficulties particularly in light of her own current published country guidance. Mr Tufan helpfully produced a copy of that guidance - (Country Information and Guidance Sri Lanka : Tamil Separatism : 28 August 2014) -

which states, among other things, that :*"A person who is known to the authorities, such as having their name on a 'stop' list or having a court order or an outstanding arrest warrant against him them would be considered at risk and a grant of asylum will normally be appropriate."*

10. Having considered the submissions of the representatives, I announced at the hearing that I was satisfied that there was an error of law in the decision of Judge Amin on the basis that, whilst he was aware that corroboration was not a requirement in asylum law, he failed to apply that principle to his consideration of whether the Appellant's name would appear on a "stop list". So much is clear I find at [99] where the judge noted : *"The Appellant claimed that his name is on the stop list. However, no evidence has been produced to show this is the case."* The judge does not state what evidence would be readily available to the Appellant in order to prove this claim and as the Upper Tribunal pointed out in **GJ** (at 114, 125 & 130) the list is part of a Sri Lankan State Intelligence database, to which access is controlled. In the circumstances, the Appellant is likely to have faced some inherent difficulties in proving that fact. I am satisfied the error requiring corroboration was material as the issue of whether the Appellant's name appears on such a list is a significant factor in assessing if he is at risk at the point of return.

11. I am further satisfied that having found that there was an outstanding arrest warrant against the Appellant, the judge failed to properly apply the guidance in **GJ** in which the Upper Tribunal found that there was a real risk of persecution facing a person whose name appeared on a computerised stop list because there was an extant arrest warrant. In **GJ** at paragraphs 356 (4), (6) and 7(d) the Tribunal stated thus:

"356. Having considered and reviewed all the evidence, including the latest UNHCR guidance, we consider that the change in the GOSL's approach is so significant that it is preferable to reframe the risk analysis for the present political situation in Sri Lanka. We give the following country guidance:

.....

(4) If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection.

.....

(6) 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.

(7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:

(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.”

12. Whilst the judge referred to the head note in **GJ** his analysis of the guidance therein to the applicable facts was inadequate. In particular, there was a failure to properly engage with the findings at paragraph (4) and 7(d) of **GJ** in light of the accepted fact that the Appellant was detained and the existence of an extant arrest warrant.
13. Having found that the judge materially erred in law the parties were invited to address the Tribunal as to their respective position on disposal. Mr Spurling submitted that as the judge accepted that there was an extant arrest warrant against the Appellant and, given that there was no dispute these findings could be preserved, he invited the Tribunal to remake the decision. Mr Tufan invited the Tribunal to remit the matter to the First-Tier Tribunal for a de novo hearing. In light of the unchallenged accepted findings, I considered that it was unnecessary to send the matter back to the First-Tier Tribunal. I considered it appropriate to set aside the decision of the First-tier Tribunal save for the preserved findings of fact and to remake the decision in the appeal.

Re-making the Decision

14. I have borne in mind that the burden is on the Appellant to show that there is a real risk of persecution and/or serious harm in the event of a return. I also bear in mind the preserved findings in relation to the Appellant's asylum claim and case law of **MP and NT v Secretary of State for the Home Department [2014] EWCA Civ 829** and **GJ**.
15. **GJ** has established that the risk for those in whom the Sri Lankan authorities were interested in existed not necessarily at the airport but after the arrival in their home area where their arrival would be verified by the CID or police within days. That said, the head note of **GJ** confirms that individuals who are perceived to be a threat to the integrity of Sri Lanka as a single state because they are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora were those who would be at risk. The Sri Lankan authorities' approach is based on the sophisticated intelligence basis to activities within Sri Lanka and in the diaspora and they are aware that many Sri Lankans travel abroad as economic migrants.
16. I have noted above what has been accepted regarding the Appellant. He is a Muslim from the central province of Kandy. The authorities' perception of him is that he is affiliated to the LTTE. On the strength of that he was detained of which there is a record. Mr Spurling took the Tribunal to the evidence that shows there is a court order against the Appellant and two unexecuted warrants. That evidence was before the First-tier Tribunal and accepted.

17. The past history of the Appellant must be of relevance in assessing the risk on return and it is against this background I consider his circumstances. It has been found that the Appellant was detained and that there is an extant arrest warrant(s) against him. He was arrested on the basis that he was suspected of being an LTTE member. He was placed in detention but he was able to secure his release on bail. He reported to the police station until he left Sri Lanka. He facilitated his exit from Sri Lanka via an agent and thus did not leave the country without assistance.
18. I find that the Appellant was detained by the authorities on account that he was previously perceived to have links with the LTTE in Sri Lanka. On this fact together with the acceptance that there is an extant arrest warrant(s), I consider that there is a real risk that his name will appear on a stop-list, and thus there is a real risk that he will be picked up by the authorities on return and detained for interrogation. What was accepted in **GJ** was that if a person is detained by the Sri Lankan security service on return there remains a real risk of ill-treatment or harm requiring international protection and that internal relocation was not an option. I find that the Appellant is at risk of detention on return home by the Security Services and risks ill-treatment. This is particularly so in light of the fact that there is an outstanding warrant against him issued as a consequence of his failure to answer bail, the circumstances of which relate to his arrest on grounds that he is a suspected LTTE member. Even if, for arguments sake, the Appellant's name does not appear on a stop list, as Mr Tufan pointed out, the Respondent's own guidance states that an asylum-seeker who has an outstanding warrant against them "would be considered at risk and a grant of asylum will normally be appropriate." I am thus satisfied and find that the Appellant has made out his case for international protection.
19. I therefore allow the appeal on asylum grounds under the Refugee Convention.

Notice of Decision

I set aside the decision of the First-tier Tribunal to be re-made.
I substitute a decision allowing the Appellant's appeal on asylum grounds.

Signed

Date

Deputy Upper Tribunal Judge Bagral

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 his 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

Deputy Upper Tribunal Judge Bagral

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Bagral