



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

Appeal Number: AA018182015

THE IMMIGRATION ACTS

**Heard at Centre City Tower, Decision & Reasons
Birmingham Promulgated
On 2nd August 2017 On 10 August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RR

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mrs H Aboni, Senior Home Office Presenting Officer

For the Respondent: Mr P Lewis of Counsel instructed by Theva Solicitors

DECISION AND REASONS

Introduction and Background

1. The Secretary of State appeals against a decision of Judge I Ross of the First-tier Tribunal (the FtT) promulgated on 25th April 2017.
2. The Respondent before the Upper Tribunal was the Appellant before the FtT and I will refer to him as the claimant.

3. The claimant is a male Sri Lankan citizen born 3rd December 1985. His asylum and human rights claim was refused on 19th January 2015.
4. The appeal was considered by the FtT on 8th March 2017 and allowed on asylum grounds.
5. The Secretary of State applied for permission to appeal to the Upper Tribunal. In summary it was contended that the FtT had given inadequate reasons for finding the claimant would be at risk. It was contended that the FtT, with reference to GJ Sri Lanka CG [2013] UKUT 319 (IAC) had not adequately explained which risk category the claimant fell into.
6. It was submitted that the FtT finding that the claimant had a significant role in post-Tamil separatism seemed wholly unsustainable in view of the fact that the FtT found that the claimant had not undertaken any LTTE activities in the UK, and had only participated in a few protests and remembrances.
7. It was pointed out that GJ makes it clear that attendance at one or more demonstrations is insufficient to place an individual at risk, and the Sri Lankan authorities use sophisticated intelligence to monitor activities in the diaspora.
8. The Secretary of State was granted permission to appeal, Judge Foudy finding the grounds arguable.
9. Following the grant of permission the claimant did not lodge a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FtT decision contained an error of law such that it should be set aside.

The Upper Tribunal Hearing

10. Mrs Aboni relied upon the grounds contained within the application for permission to appeal, submitting that the FtT had misdirected itself when considering risk categories, and had not explained how the claimant fell into any of the risk categories outlined in GJ. Mrs Aboni submitted that the FtT had failed to give adequate reasons, at paragraph 24, for concluding that the Sri Lankan authorities would retain an interest in him, and had failed to explain why he would be perceived by the Sri Lankan authorities to have a significant role in Tamil separatism.
11. Mr Lewis argued that the FtT had not materially erred in law. I was asked to note that the Secretary of State had not challenged the FtT finding that the claimant had been arrested in Sri Lanka on 23rd September 2013, and had been ill-treated while in detention. Mr Lewis pointed out that this arrest took place after the Sri Lankan conflict ended.
12. Mr Lewis submitted that the claimant fell within the risk category outlined at paragraph (7)(a) of the head note to GJ. The reason that the claimant

had been arrested was because he was suspected of belonging to the LTTE international network.

13. I was reminded that it was conceded by the Secretary of State at paragraph 168 of GJ that individuals in custody in Sri Lanka continued to be at risk of physical abuse, and that such risk is persecutory.
14. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

15. The Secretary of State has not challenged the FtT finding that the claimant was arrested in September 2013 and subsequently detained and tortured. The claimant's account was that he was detained for six days, and tortured, before being released after payment of a bribe.
16. The claimant's case was that he was arrested because the Sri Lankan authorities suspected him of belonging to the LTTE international network. This was accepted by the FtT as the reason for his arrest, the FtT finding at paragraph 21 that the claimant had given a credible account of his arrest and detention in September 2013.
17. As pointed out by Mr Lewis, the claimant was therefore arrested after the civil war in Sri Lanka ended in May 2009.
18. As the arrest and detention has not been the subject of any challenge from the Secretary of State, that finding by the FtT stands. Therefore, in my view, the FtT was entitled to conclude that in September 2013, the Sri Lankan authorities had an adverse interest in the claimant. That was because he was suspected of being involved in the LTTE international network. The FtT, having found that the claimant had been tortured, was entitled at paragraph 22 to have regard to paragraph 339K of the Immigration Rules, which states that the fact that a person has already been subject to persecution or serious harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.
19. I find that the FtT was therefore entitled to conclude that the claimant would be at real risk of persecution or serious harm, with reference to paragraph (7)(a) of the head note to GJ, because there was a risk that he would be perceived to be a threat to the integrity of Sri Lanka as a single state, and that he would be perceived to have a significant role in relation to post-conflict Tamil separatism. The FtT did not find that the Sri Lankan authorities, having arrested, detained and ill-treated the claimant, were satisfied that he had no involvement in post-conflict Tamil separatism.
20. I find that the challenge raised by the Secretary of State, displays a disagreement with the conclusions reached by the FtT, but does not disclose a material error of law.

Notice of Decision

The FtT did not materially err in law. The decision of the FtT stands and the appeal of the Secretary of State is dismissed.

Anonymity

The FtT made an anonymity direction. Unless and until a Tribunal or court directs otherwise, the claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify the claimant or any member of his family. This direction applies both to the claimant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings. This direction is made because the claimant has made a claim for international protection, and is made pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date

7th August 2017

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

As the decision of the FtT stands, so does the decision to make a fee award.

Signed

Date

7th August 2017

Deputy Upper Tribunal Judge M A Hall