



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

Appeal Number: AA/05385/2015

THE IMMIGRATION ACTS

Heard at: Field House

**Decision and reasons
Promulgated**

On: 5 June 2017

On: 7 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**MR THAVALINGHAN KANAGASABAI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Paramjorthy of Counsel

For the Respondent: Mr Avery, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka born on 23 September 1983. He appealed against the decision of the respondent dated 11 March 2015 to refuse to grant him asylum and humanitarian protection in the United Kingdom. First-tier Tribunal Judge Pooler dismissed the appellant's appeal on 1 March 2017.
2. Permission to appeal was at first refused by First-tier Tribunal Judge Kimmel and subsequently granted by an Upper Tribunal Judge McGeachy on 20 April 2017 stating that it is arguable that the Judge did not note Dr Lawrence's psychiatric report at pages 13 and 14 and 20.

He also found that the appellant's *sur plus* activities in this country could be a cause for concern.

3. Thus, the appeal came before me.

The First-tier Tribunal's findings

4. The First-tier Tribunal Judge made the following findings in dismissing the appellant's appeal which I set out in summary. The appellant's case is that on 26 December 2010, he was stopped at an army checkpoint and identified as a LTTE member and detained at Vallai camp where he was questioned and beaten for four weeks. He was released after his father paid a bribe. He was required to report weekly but was scared that he would be detained and his father hired an agent to arrange for the appellant to obtain a student visa for the United Kingdom and to pass through immigration control at the airport in Sri Lanka. The appellant claims that the authorities in Sri Lanka have attended the appellant's family home and asked about his whereabouts.
5. The appellant has provided a number of medical reports including one from Dr Lawrence a consultant psychiatrist. Dr Lawrence concluded that the appellant had symptoms of post-traumatic stress disorder and secondary depression and in his opinion; the trauma described by the appellant is a primary cause of his PTSD. The Judge accepted the medical evidence.
6. The respondent accepted that the appellant was at the very least, a supporter of the LTTE. The appellant has given a broadly consistent account of his detention and ill-treatment beginning in December 2010. The apparent inconsistencies relating to the length of training carry little weight. The medical evidence indicates that the scarring and other physical signs together with the psychiatric diagnoses are consistent with the appellant's case and support it. The Judge found that the account given by the appellant is a broadly credible one.
7. The Judge was satisfied that the appellant became and remained a member of the British Tamil Forum whilst in the United Kingdom. At his interview, he claimed to have attended two meetings at Tamil house in North London, a demonstration in London, a celebration in Coventry and a celebration on Hero's day in London. There is no evidence in the appellant's latest statement of any British Tamil's forum activity since his interview on 2 March 2015. His evidence that he has been collecting donations from shops and had attended a demonstration on 18 May 2016 is not credible. In any event there is no cogent evidence to indicate that such activity over the past two years would have attracted the adverse attention of the Sri Lanka authorities or indeed would have become known to them. The country guidance case **GJ and others (post-Civil War returnees) Sri Lanka CG [2013] UKUT 319 (IAC)** makes clear that the Sri Lankan authorities undertake

sophisticated intelligence gathering. The Judge was not persuaded that the appellant's claimed activities in 2015 and 2016, even if credible, would be seen by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan State of the Sri Lanka government.

8. The appellant's evidence was vague about the authorities in Sri Lanka attending his family house and asking for his whereabouts. No warrant of arrest has been issued for him which he accepted during cross examination. His name would not appear on the computerised list accessible at the airport, as a result of which a person whose name does appear on the list would be stopped at the airport and handed over to the authorities.
9. The Judge took into account the country guidance case of **GJ** which is set out at length in his decision. The Judge found that the appellant was a subject of persecution while in Sri Lanka, was detained and seriously ill treated by reason of his political opinion, having been identified as an a LTTE member who provided them with intelligence. This fact is to be regarded as a serious indication of the real risk of future harm unless there are good reasons to consider that it will not be repeated.
10. The case of **GJ** gives guidance that the Sri Lankan authorities have their focus on preventing the resurgence of the LTTE and the revival of the civil war. As to the categories of person in real risk, the appellant does not fall within those listed at (7) (b) (c) or (d) of the country guidance case. The appellant will not be perceived to be a threat as a person having a significant role in relation to post-conflict Tamil separatism and/or a renewal of hostilities. The appellant cannot on any reasonable assessment of his activity with the BTF, be regarded as falling within such a category. For similar reasons, there is no real risk that his name would appear on an intelligence led watch list. His diaspora activities, at their highest, could not lead the Sri Lankan authorities to believe that he represented a present risk to the Sri Lankan government.
11. The Judge was not persuaded that the appellant has been the subject of adverse interest of the authorities in Sri Lanka since he fled the country. It is not credible that the authorities have maintained an interest in him and have searched for the appellant particularly in light of the evidence concerning the attitude of the authorities as found in **GJ**. The Judge give consideration to the country guidance case of **CJ**. Accordingly, the appellant would not be at real risk on return either at the airport or on arrival in Sri Lanka and subsequently in his home area. The judge stated, "I do not consider any other basis of appeal in light of Mr Paramjorthy's explicit concession that no other grounds were relied upon".

Grounds of appeal

12. The relevant grounds of appeal state the following which I summarise. Ground one states that the First-tier Tribunal Judge has erred by making clinical judgements concerning the medical findings of GP Dr L Clarke. The second ground is that the First-tier Tribunal Judge has erred by making clinical judgements concerning the medical findings of Dr Lawrence. The third ground is that the impact of PTSD and vulnerability on discrepancies regarding evidence of torture.

Findings as to whether there is an error of law

13. The Judge in an extensive and well-reasoned decision accepted the appellant's evidence that he had been tortured in Sri Lanka while he was in detention as a member of the LTTE. He discounted any credibility issues raised by the respondent. The Judge found that past persecution and considering the appellant's present circumstances, will not amount to future persecution. The Judge found that the appellant would not be at risk on his return to Sri Lanka and was guided by the country guidance case of **GJ**.

14. It was held in **GJ** that the focus of the Sri Lankan government's concern has changed since the Civil War ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the Civil War. The government's present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilize the unitary Sri Lankan state and its focus is on preventing the re-insurgence of the LTTE or any similar Tamil separatist organizations and the revival of the Civil War within Sri Lanka. It states that if a person is detained by the Sri Lankan security services, there remains a real risk of ill treatment or harm requiring international protection. It states that internal relocation is not an option within Sri Lanka for a person at real risk from Sri Lankan authorities since the government now controls the whole of Sri Lanka and Tamils are required to return to a named address. After passing through the airport, it states that there are no detention facilities at the airport and only the names, which appear on the wanted list will not be detained from the airport, but in their home area when their arrival will be verified by the CID police within a few days.

15. The Judge's reasoning, in that regard is unassailable. His findings that the appellant will not be at risk of harm on his return to Sri Lanka because of his claimed political activities in Sri Lanka, cannot be said to have any error in law, material or otherwise. The Judge was entitled to find on the totality of the evidence that the appellant does not merit recognition as a refugee or that he is entitled to humanitarian protection in respect of the events which he claims happened to him in the past which have been accepted.

16. The Judge found that the appellant would not be perceived to be a threat to the Sri Lankan authorities because he does not present a risk to the unitary Sri Lankan State of the Sri Lankan government. The Judge considered the evidence as a whole against the risk factors in **GJ**. There was no evidence before the Judge from which he could have concluded that the past activities of the appellant would cause him to be at risk on his return to Sri Lanka.
17. Implicit in the decision is that the present medical condition, as set out by Dr Lawrence in his report, the appellant is not capable and will not be perceived to be capable of mounting any resistance or pose a threat to the unitary state of Sri Lanka. The appellant cannot have it both ways. On the one hand, he states he is too unwell, suffering from PTSD and depression and on the second hand he says he will be perceived to be a threat by the Sri Lankan authorities. In **GJ** it is stated that the Sri Lankan authorities approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the diaspora. The Sri Lanka and intelligence would have intelligence that the appellant is a spent force.
18. The Judge found that the appellant was released on the condition that he report to the authorities every week, after he had been tortured by them. If the appellant had been further interest of the authorities, he would not have been released and therefore the Judge's conclusion that he is of no interest of the authorities is well placed. It is not credible evidence that the authorities would release the appellant after having tortured him and then expect him to present himself and not run away. That is exactly what the appellant's evidence was that he was scared to report because he did not wish to be detained again and his father hired an agent to get him out of the country. It must have been obvious to the authorities, that the appellant would not report yet they still let him go. The Judge was entitled to find that authorities have no interest in him.
19. The Judge found that the appellant is not a person whose name would appear on a computer "the stop" list accessible at the airport because there is no warrant of arrest issued against him. If the appellant had been released on the payment of a bribe, as he claims, there would not be an arrest warrant against him and therefore he would not be on the computer stop list. This is a sustainable finding.
20. The Judge did consider and make proper findings on the second limb of the appellant's claim that he has participated in political activities in the United Kingdom which would put him at risk on his return to Sri Lanka. He was aware that even in circumstances where the appellant has created an opportunistic refugee *sur place* claim, the appellant's Refugee Convention or humanitarian protection claim will nonetheless succeed if he can establish in accordance with the applicable burden of proof that there is a real risk of him suffering persecution for a

Convention reason on return. In **Danian [2000] IAR 96** the Court of Appeal held that even where a refugee *sur place* has acted in bad faith in the United Kingdom with the purpose of creating an asylum claim where otherwise he would have had none, the Refugee Convention will nonetheless apply provided that he has a genuine and well-founded fear of persecution for a Convention reason and there is a real risk that such persecution may take place.

21. The Judge was entitled to hold that the appellant would not be of interest to the authorities in Sri Lanka because of his previous activities in Sri Lanka or the United Kingdom. **GJ** said that it will a question of fact to be decided in each case, depending on any diaspora activities carried out by such an individual. The Judge was entitled to find that the appellant had not produced credible evidence that he had participated in any LTTE activities in the United Kingdom after 2015.
22. In **GJ** it states that the Sri Lankan authorities are aware that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had the same level of involvement with the LTTE during the Civil War. In post-conflict Sri Lanka, an individual's past history will be relevant only to the extent that it is perceived by the Sri Lankan authorities as including as indicating present risk to the unitary Sri Lankan State of the Sri Lankan government. The Judge was entitled to find that the appellant does not fit this category of those who may be at risk of **GJ**.
23. Therefore, the Judge found as a matter of fact found that the appellant's activities in the United Kingdom will be of no interest to the Sri Lanka and authorities for all the reasons given. The appellant's appeal is no more than a quarrel with the decision of the Judge.
24. The Judge's finding that the appellant can return to Sri Lanka and will not be perceived to have a role significant or otherwise in relation to post-conflict Tamil separatism within the diaspora and all renewal of hostilities within Sri Lanka is a sustainable conclusion on the facts of the case.

Decision

The appellant's appeal is dismissed.

Signed by

A Deputy Judge of the upper Tribunal
Mrs S Chana

Dated 6th day of June 2017